

## **36 Interfaith Groups Urge Senate to Fulfill Constitutional Duty, Ensure Fully Functioning US Supreme Court**

February 23, 2016

Dear Senator:

**We, the undersigned interfaith groups urge the president and Senate to fulfill their constitutional duties and move ahead in filling the current vacancy on the US Supreme Court.** While we might not all take the same position on the eventual nominee, we are united in our desire to see a civil, fair, and expeditious process.

We join those who salute the service of the Associate Justice of the Supreme Court Antonin Scalia, and send sincere condolences and prayers of comfort to his family and all who mourn his sudden passing. While we may not all agree with all of the views and opinions authored by the late-Justice Scalia, we do appreciate his fierce dedication to the US Constitution and the Supreme Court as an institution central to our democratic society.

We believe it is crucial that the Supreme Court be able to fully and fairly function. Article II of the US Constitution makes clear that, in the event of a vacancy on the Supreme Court, the sitting president has a duty to fill the vacancy with the advice and consent of the Senate. The timing of this vacancy could not have been predicted, but it is no different than any other vacancy and should be addressed immediately by the president and the Senate.

We are disappointed that there are those, including some senators, who are calling for a delay in the nomination and confirmation of a new Supreme Court justice — in disregard of the Constitution so cherished by the late Justice Scalia.

As people of diverse faiths, we are inspired and informed by the pursuit of justice. We must do all we can to ensure that our nation's highest court is fully functioning. If we fail to expeditiously advance the filling of the current vacancy, we abdicate our responsibility to justly serve the dignity of all.

If Congress fails to act, the Supreme Court will go two terms — well over a year — with a vacancy.

The American people expect that the legislative branch will do its job so that the judicial branch can carry out its duties. **The Senate should fulfill its responsibility to the institution to which Justice Scalia dedicated his professional life and ensure it may function as the beacon of justice that our founders envisioned.**

Ameinu (Our People)  
American Atheists  
Anti-Defamation League  
AVODAH: The Jewish Service Corps  
Aytzim: Ecological Judaism  
Bend the Arc Jewish Action  
Beth El - The Heights Synagogue (BETHS) (Ohio)  
Casa Esperanza  
Catholics for Choice  
Christ Congregation (New Jersey)

Concerned Clergy for Choice (New York)  
Conversations With Friends (Minnesota)  
DignityUSA  
Dominican Sisters of Houston  
Evangelical Lutheran Church in America Advocacy  
Faith in Public Life  
Interfaith Action of Greater Saint Paul  
Interfaith Alliance  
JALSA-the Jewish Alliance for Law and Social Action (Massachusetts)  
Jewish Labor Committee  
National Council of Churches  
National Council of Jewish Women  
National Religious Campaign Against Torture  
New Ways Ministry  
Planned Parenthood Federation of America Clergy Advocacy Board  
Reconstructionist Rabbinical Association  
Reconstructionist Rabbinical College/ Jewish Reconstructionist Communities  
Religious Coalition for Reproductive Choice  
Religious Institute  
South Florida Interfaith Worker Justice  
The Sisters of Mercy of the Americas, Institute Justice Team  
Union for Reform Judaism  
Unitarian Universalist Congregation of the Lowcountry (South Carolina)  
Unitarian Universalist Women's Federation  
UU Voices for Reproductive Freedom New Orleans  
Women's Alliance for Theology, Ethics, and Ritual (WATER)

## Statement of Constitutional Law Scholars on the Supreme Court Vacancy

February 24, 2016

We write as constitutional law scholars to urge President Obama and the United States Senate to fulfill their constitutional duties with regard to the vacancy that exists on the Supreme Court because of the death of Justice Antonin Scalia. We do not write in support of or in opposition to any specific candidate. Rather, our position is simply that the President has the duty to nominate a candidate to fill the current Supreme Court vacancy and the Senate has the duty to “advise and consent,” which means to hold hearings and to vote on the nominee.

Article II of the Constitution is explicit that the president “shall nominate . . . judges of the Supreme Court.” There is no exception to this provision for election years. Throughout American history, presidents have nominated individuals to fill vacancies during the last year of their terms.

Likewise, the Senate’s constitutional duty to “advise and consent” – the process that has come to include hearings, committee votes, and floor votes – has no exception for election years. In fact, over the course of American history, there have been 24 instances in which presidents in the last year of a term have nominated individuals for the Supreme Court and the Senate confirmed 21 of these nominees.

The Senate, of course, has discretion in the method of carrying out its constitutional duty to “advise and consent,” but for the Senate not to consider a nominee until after the next president is inaugurated would be unprecedented and would leave a vacancy that would undermine the ability of the Supreme Court to carry out its constitutional duties. It would mean that the Court would have to function with eight justices for the remainder of this term and virtually all of the next. This inevitably would mean 4-4 splits in a significant number of cases. During the October Term 2014 there were 66 decisions of which 19 were 5-4. A vacancy on the Court for a year and a half likely would mean many instances where the Court could not resolve a split among the circuits. There would be the very undesirable result that the same federal law would differ in meaning in various parts of the country.

We urge the President to nominate as soon as reasonably possible an individual to fill the vacancy existing on the Court and the Senate to hold hearings and vote on the nominee.

Signed,

**Kate Andrias**

Assistant Professor of Law  
University of Michigan Law School

**Joseph Blocher**

Professor of Law  
Duke University School of Law

**Erwin Chemerinsky**

Founding Dean and Distinguished Professor of Law  
and Raymond Pryke Professor of First Amendment Law  
University of California, Irvine School of Law

**Joshua Douglas**

Robert G. Lawson & William H. Fortune  
Associate Professor of Law  
University of Kentucky College of Law

**Edward Fallon**

Associate Professor of Law  
Marquette University Law School

**Dmitry Bam**

Associate Professor  
University of Maine School of Law

**Elise Boddie**

Professor of Law  
Rutgers Law School–Newark

**Caroline Mala Corbin**

Professor of Law  
University of Miami School of Law

**Peter Edelman**

Carmack Waterhouse Professor of Law and Public Policy  
and Faculty Director, Center on Poverty and Inequality  
Georgetown University Law Center

**Ruben Garcia**

Professor of Law  
UNLV William S. Boyd School of Law

**Frederick Mark Gedicks**

Guy Anderson Chair and Professor of Law  
Brigham Young University Law School

**Jamal Greene**

Professor of Law  
Columbia Law School

**Ariela Gross**

John B. and Alice R. Sharp Professor of Law and History  
University of Southern California Gould School of Law

**Melissa Hart**

Professor of Law, Director of the Byron R. White Center  
University of Colorado Law School

**Nicole Huberfeld**

Associate Dean of Academic Affairs and  
Ashland-Spears Distinguished Research Professor of Law  
University of Kentucky College of Law

**William Marshall**

William Rand Kenan, Jr. Distinguished Professor of Law  
University of North Carolina School of Law

**Gene Nichol**

Boyd Tinsley Distinguished Professor  
University of North Carolina School of Law

**Steve Sanders**

Associate Professor of Law  
Indiana University Maurer School of Law

**Peter Shane**

Jacob E. Davis and Jacob E. Davis II Chair in Law  
Ohio State University Moritz College of Law

**Neil Siegel**

David W. Ichel Professor of Law  
Professor of Political Science  
Co-Director, Program in Public Law  
Director, DC Summer Institute on Law & Policy  
Duke Law School

**Verna Williams**

Judge Joseph P. Kinneary Professor of Law  
University of Cincinnati College of Law

**Rebecca E. Zietlow**

Charles W. Fornoff Professor of Law and Values  
University of Toledo College of Law

**Abner Greene**

Leonard F. Manning Professor  
Fordham Law School

**Kent Greenfield**

Professor of Law and Dean's Research Scholar  
Boston College Law School

**Pratheepan Gulasekaram**

Associate Professor of Law  
Santa Clara University School of Law

**B. Jessie Hill**

Associate Dean for Academic Affairs and  
Judge Ben C. Green Professor of Law  
Case Western Reserve University School of Law

**Mark Kende**

Professor of Law, James Madison Chair in Constitutional  
Law, and Director of the Drake Constitutional Law Center  
Drake Law School

**Alan Morrison**

Lerner Family Associate Dean for Public Interest &  
Public Service Law  
George Washington Law School

**Kermit Roosevelt**

Professor of Law  
University of Pennsylvania Law School

**Steven Schwinn**

Associate Professor of Law  
John Marshall Law School

**Theodore Shaw**

Julius L. Chambers Distinguished Professor of Law and  
Director of the Center for Civil Rights  
University of North Carolina School of Law

**Barry Sullivan**

Professor of Law and Cooney &  
Conway Chair in Advocacy  
Loyola University Chicago School of Law

**Adam Winkler**

Professor of Law  
UCLA School of Law

*University affiliation provided for identification purposes only.*





## **Uphold the Constitution: Fairly Consider the President's Nomination for the Supreme Court Vacancy**

February 25, 2016

RECEIVED FEB 25 2016

Dear Senator:

The American Association of University Women (AAUW) joined the nation in mourning the passing of U.S. Supreme Court Justice Antonin Scalia who served on the court for nearly 30 years. The Supreme Court has pending cases that will greatly affect the everyday lives of women and their families, and Justice Scalia's untimely death creates a vacancy at a critical juncture. It is in the face of losing such a legal giant that we remember how fortunate we are, as a nation, to have a constitutional process to see us smoothly through this transition.

On behalf of the 170,000 bipartisan members and supporters of AAUW, I urge you uphold the U.S. Constitution by moving forward to fairly and expeditiously consider any nominee put forward by President Obama to fill the Supreme Court vacancy. In so doing, the American people will be reassured that a fully staffed court will be available to deliver this year's critical Supreme Court decisions.

The Appointments Clause of the Constitution lays out three sequential acts in order to fill a vacancy. First, the nomination of the president, second the advice and consent of the U.S. Senate, and third the appointment by the president. There is no exception for the president to refuse to nominate a successor nor is there an exception for senators to refuse to provide advice and consent. Public statements by Senate Majority Leader Mitch McConnell and Republican members of the Senate Judiciary Committee that they will take no action on any nominee put forward by the president, before a nominee has even been named, impedes the function of government to ensure equal access to a fully functioning judicial system.<sup>i</sup> AAUW and our members feel compelled to urge all senators to reject cynical tactics to preemptively disqualify the president's nominee or to obstruct any nominee for purely partisan reasons.

Proponents of obstruction have attempted to mislead the public by claiming there is not enough time left in the president's term and that appointments should not occur in election years. These statements are false. Not only are these tactics a strong indication of the naked partisanship of this obstructionism, but it severely undermines the function of the Supreme Court and the integrity of the Senate. Waiting until January 2017 for a replacement would mean that for the first time in history, the Supreme Court would be without its full complement of justices for a good portion of two terms of the court.

Retired Supreme Court Justice Sandra Day O'Connor responded quickly to this delay tactic by stating, "I don't agree [with waiting] ... I think we need somebody there now to do the job and let's get on with it."<sup>ii</sup> Editorial boards from Colorado, Wisconsin, Ohio, New

Hampshire, Pennsylvania, Iowa, Kentucky, Illinois, Maine and all over the country agree that the Senate should follow the Constitution and fairly consider President Obama's nominee.<sup>iii</sup> Furthermore, a majority of Americans (56%) say the Senate should hold hearings and vote on President Obama's choice to fill the vacancy.<sup>iv</sup>

**AAUW urges senators to demand that Majority Leader McConnell and the Republican members of the Judiciary Committee rethink this unprecedented course of obstructionism and fairly consider any nominee put forward by President Obama to fill the Supreme Court vacancy. Furthermore, the full Senate should be given the opportunity for an “up or down” vote on any qualified nominee.**

Votes associated with this issue may be included in the AAUW Action Fund *Congressional Voting Record* for the 114th Congress. If you have any questions or need additional information, feel free to contact me at 202/785-7720, or Erin Prangle, associate director for government relations, at 202/728-7730.

Sincerely,



Lisa M. Maatz  
Vice President for Government Relations

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<sup>i</sup> Herszenhorn, David. “G.O.P. Senators Say Obama Supreme Court Pick Will be Rejected.” New York Times. February 24, 2016. [http://www.nytimes.com/2016/02/24/us/politics/supreme-court-nomination-obama.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&\\_r=0](http://www.nytimes.com/2016/02/24/us/politics/supreme-court-nomination-obama.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&_r=0)

<sup>ii</sup> Zorthian, Julia. “Sandra Day O’Connor Says Obama Should Name New Supreme Court Justice.” Time. February 18, 2016. <http://time.com/4228800/oconnor-scalia-obama-supreme-court/>

<sup>iii</sup> Sugermeli, Glenn. “Nearly 200 Editorial Boards Across the Country Agree: This year the Senate Should Hold a hearing and Vote on Nominee to Fill Scalia Supreme Court Vacancy – State by State Links/Excerpts.” February 23, 2016. [http://www.judgingtheenvironment.org/press/op\\_ed/op-ed-full-texts/Editorials-on-Scalia-vacancy-by-state-Feb-23-2016.pdf](http://www.judgingtheenvironment.org/press/op_ed/op-ed-full-texts/Editorials-on-Scalia-vacancy-by-state-Feb-23-2016.pdf)

<sup>iv</sup> Pew Research Center. “Majority of Public Wants Senate to Act on Obama’s Court Nominee.” February 22, 2016. <http://www.people-press.org/2016/02/22/majority-of-public-wants-senate-to-act-on-obamas-court-nominee/>

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We are disappointed that there are those, including some senators, who are calling for a delay in the nomination and confirmation of a new Supreme Court justice — in disregard of the Constitution so cherished by the late Justice Scalia.

As people of diverse faiths, we are inspired and informed by the pursuit of justice. We must do all we can to ensure that our nation's highest court is fully functioning. If we fail to expeditiously advance the filling of the current vacancy, we abdicate our responsibility to justly serve the dignity of all.

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Beth El - The Heights Synagogue (BETHS) (Ohio)  
Casa Esperanza  
Catholics for Choice  
Christ Congregation (New Jersey)

Concerned Clergy for Choice (New York)  
Conversations With Friends (Minnesota)  
DignityUSA  
Dominican Sisters of Houston  
Evangelical Lutheran Church in America Advocacy  
Faith in Public Life  
Interfaith Action of Greater Saint Paul  
Interfaith Alliance  
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Jewish Labor Committee  
Jewish Women International  
National Council of Churches  
National Council of Jewish Women  
National Religious Campaign Against Torture  
New Ways Ministry  
Planned Parenthood Federation of America Clergy Advocacy Board  
Reconstructionist Rabbinical Association  
Reconstructionist Rabbinical College/ Jewish Reconstructionist Communities  
Religious Coalition for Reproductive Choice  
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South Florida Interfaith Worker Justice  
The Sisters of Mercy of the Americas, Institute Justice Team  
Union for Reform Judaism  
Unitarian Universalist Congregation of the Lowcountry (South Carolina)  
Unitarian Universalist Women's Federation  
UU Voices for Reproductive Freedom New Orleans  
Women's Alliance for Theology, Ethics, and Ritual (WATER)

February 26, 2016

The Honorable Charles Grassley, Chairman  
The Honorable Orrin Hatch  
The Honorable Jeff Sessions  
The Honorable Lindsey Graham  
The Honorable John Cornyn  
The Honorable Michael Lee  
The Honorable Ted Cruz  
The Honorable Jeff Flake  
The Honorable David Vitter  
The Honorable David Perdue  
The Honorable Thom Tillis

Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Senators:

We, the undersigned organizations, urge you to reconsider your unprecedented and destructive refusal to give fair consideration to any Supreme Court nomination until after the next President is sworn into office on January 20, 2017, as announced in your February 23<sup>rd</sup> letter to Senate Majority Leader Mitch McConnell.

Your letter claims that your refusal to hold a hearing on—or to even meet with— any potential nominee is part and parcel to executing your “constitutional authority to withhold consent on any nominee.” This is a clear perversion of your constitutional duties as understood by almost every scholarly authority on the topic and by most Americans.

It is a dereliction of your constitutional duty to handcuff the Supreme Court for two terms. Your proposed course of action would cause a constitutional crisis that would shake the very foundation of our democracy.

We condemn this unprecedented overreach, and call on you to uphold the Constitution by giving fair consideration, including timely hearings and votes, to the next nominee to the Supreme Court.

Under Article II, Section 2 of the U.S. Constitution, the President shall nominate a Justice to the Supreme Court “by and with the Advice and Consent of the Senate.” This does not give a select few senators veto power over the President’s role in selecting and nominating a candidate. The Senate’s duty is to evaluate a nominee’s fitness and qualifications, not to pick the President making the nomination.

Our legal system is based on the rule of law and requires stability and certainty. The course you have charted would mean that a new justice would not be confirmed until well into 2017 at the earliest. Shackling the court for two terms would undermine the rule of law, leave legal questions unresolved, and hamper the administration of justice across our nation.

Refusing to consider any nominee, without due evaluation of his or her merits, credentials, and experiences, is a direct repudiation of your constitutional duties.

We believe in upholding the Constitution. So should you.

Sincerely,

The Leadership Conference on Civil and Human Rights  
Philip Randolph Institute  
AFL-CIO  
African American Ministers In Action  
Alliance for Justice  
American Association for Access, Equity and Diversity  
American Association For Justice  
American Family Voices  
American Federation of State, County, and Municipal Employees  
American Federation of Teachers  
American-Arab Anti-Discrimination Committee  
Americans for Democratic Action (ADA)  
Americans United for Change  
Andrew Goodman Foundation  
Asian & Pacific Islander American Health Forum  
Asian American Legal Defense and Education Fund (AALDEF)  
Asian Americans Advancing Justice | AAJC  
Asian Pacific American Labor Alliance, AFL-CIO (APALA)  
Association of Asian Pacific Community Health Organizations (AAPCHO)  
Bazelon Center for Mental Health Law  
Bend the Arc Jewish Action  
Center for American Progress  
Center for Community Change  
Center for Pan Asian Community Services, Inc. (CPACS)  
Coalition on Human Needs  
Common Cause  
Communications Workers of America  
Constitutional Accountability Center  
Defenders of Wildlife  
Disability Rights Education & Defense Fund  
Earthjustice  
Equal Justice Society  
Feminist Majority Foundation  
Human Rights Campaign  
International Association of Official Human Rights Agencies (IAOHRA)  
Iota Phi Lambda Sorority, Inc.  
Japanese American Citizen League  
Jewish Labor Committee  
Korean American Resource & Cultural Center  
Korean Resource Center  
Lambda Legal  
Lawyers' Committee for Civil Rights Under Law  
League of Conservation Voters  
League of United Latin American Citizens  
MALDEF

MoveOn.org Civic Action  
NAACP  
NAACP Legal Defense and Educational Fund, Inc.  
NAACP-National Voter Fund  
NARAL Pro-Choice America  
National Asian Pacific American Families Against Substance Abuse  
National Association of Social Workers (NASW)  
National Black Justice Coalition  
National Coalition for Asian Pacific American Community Development  
National Congress of American Indians  
National Council of Asian Pacific Americans (NCAPA)  
National Council of Jewish Women  
National Education Association  
National Employment Law Project  
National Employment Lawyers Association  
National Fair Housing Alliance  
National Korean American Service & Education Consortium  
National LGBTQ Task Force Action Fund  
National Partnership for Women & Families  
National Queer Asian Pacific Islander Alliance  
National Tongan American Society  
National Urban League  
National Women's Law Center  
People For the American Way  
Planned Parenthood Federation of America  
PolicyLink  
Project Vote  
Reconstructionist Rabbinical Association  
Service Employees International Union  
Sierra Club  
South Asian Bar Association of North America  
Southeast Asia Resource Action Center (SEARAC)  
Southern Poverty Law Center  
TASH  
Union for Reform Judaism  
United Auto Workers (UAW)  
Workmen's Circle

CC: The Honorable Mitch McConnell, Senate Majority Leader



## **Via Electronic and First Class Mail**

The Honorable Charles Grassley, Chairman  
The Honorable Orrin Hatch  
The Honorable Jeff Sessions  
The Honorable Lindsey Graham  
The Honorable John Cornyn  
The Honorable Michael Lee  
The Honorable Ted Cruz  
The Honorable Jeff Flake  
The Honorable David Vitter  
The Honorable David Perdue  
The Honorable Thom Tillis

Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

March 2, 2016

Dear Senators:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), I write to urge you to reconsider your position—announced in your February 23, 2016, letter to Senate Majority Leader Mitch McConnell and reiterated to the President on March 1, 2016 — in which you indicate your refusal to consider any potential Supreme Court nominee before the 45<sup>th</sup> President of the United States is sworn into office on January 20, 2017.

Your stated intention to refuse to hold a hearing on — and even meet with — any potential nominee for the Supreme Court also threatens to create an unprecedented (and unnecessary) constitutional crisis. Article II, section 2 of the Constitution empowers the President to appoint justices to the Supreme Court “by and with the advice and consent of the Senate.” Nothing in the text or history of that constitutional provision supports your extraordinary position that the President cannot fill a Supreme Court vacancy during his or her second term in office. Accordingly, there is no lawful basis to categorically refuse to consider such an appointment until the next President is sworn into office.

Since 1875, every nominee to the Supreme Court has received either a hearing or a vote, and the Senate has never taken more than 125 days to act on a Supreme Court nomination. Moreover, nearly a quarter of all Presidents (10) have appointed a total of at least 14 justices to the Court who were confirmed during election years, most recently President Reagan’s nominee, then-Judge Anthony Kennedy.



As the country's first and foremost civil and human rights law firm, LDF understands the critical role that the Supreme Court plays in the civic life of this nation. Since its founding in 1940, under the leadership of Thurgood Marshall, LDF has litigated numerous significant cases before the Supreme Court addressing a wide range of fundamental rights in the areas of criminal justice, economic justice, education, and political participation. *See, e.g., Brown v. Board of Education*, 347 U.S. 483 (1954); *see also Smith v. Allwright*, 321 U.S. 649 (1944); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Furman v. Georgia*, 408 U.S. 238 (1972); *Lewis v. Chicago*, 560 U.S. 205 (2010); *Shelby County v. Holder*, 570 U.S. \_\_\_\_ (2013). LDF is, and always has been, an active member of the Supreme Court bar.

Our decades of experience in the Supreme Court confirm the importance of a full complement of nine justices. The Court plays a pivotal role in resolving some of the most crucial legal questions affecting the country and its social and economic life. The public interest in the rule of law will be harmed if the Court, because it is short-staffed, is unable to resolve these matters in a clear, conclusive, and timely manner. This is particularly true in cases where the lower courts disagree on a resolution to the question at hand. Indeed, one of the most important functions of the Supreme Court is to resolve these splits. Depriving the Court of a ninth justice and increasing the risk of an equally divided Court will hamper the Court's ability to ensure the uniform and consistent application of federal law across the country.

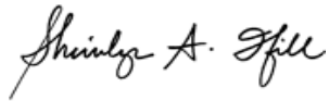
In addition, I urge the Senate Judiciary Committee to move expeditiously on the numerous still-pending nominations for the lower federal courts, including that of Judge Abdul K. Kallon to the United States Court of Appeals for the Eleventh Circuit, and to move promptly on filling the numerous longstanding vacancies that remain. As Chief Justice Roberts made clear several years ago, "[t]he judiciary depends not only on funding, but on its judges, to carry out [its] mission. . . . Over many years, however, a persistent problem has developed in the process of filling judicial vacancies." This problem has become especially acute over the last fourteen months. Indeed, since the beginning of this session of Congress in January 2015, the Senate has confirmed only sixteen nominations for the lower federal courts while approximately two dozen nominations currently remain pending in the Judiciary Committee and there are 81 total judicial vacancies and 31 judicial emergencies. For lower courts across the country, these vacancies translate to backlogs, overburdened judges, and increased obstacles to the fair and efficient access to justice.

These nominations include that of Judge Kallon for the Eleventh Circuit, who is unquestionably qualified. In 2009, he was confirmed by unanimous consent to the U.S. District Court for the Northern District of Alabama, with strong home-state support from Senators Sessions and Shelby. Since then, Judge Kallon has served with distinction on the bench. If confirmed, Judge Kallon would bring much-needed diversity to the Eleventh Circuit. He would be the first African-American judge from Alabama on the Eleventh Circuit and the second African-American active judge on that court. Finally, Judge Kallon's appointment would fill a seat that has been empty for nearly 900 days, a vacancy which the Administrative Office of the

U.S. Courts has declared a judicial emergency. Judge Kallan's nomination must move forward without delay.

Overall, I fear that the Judiciary Committee is at a crossroads: will it force an unprecedented constitutional crisis by stymying some of the Supreme Court's critical functions and cement the divisive politics of obstruction? Or will it faithfully carry out its constitutional duties, and return to the mainstream practice of holding a hearing for Supreme Court nominees – a historical norm that has spanned party lines since 1875? We urge the latter.

Sincerely,

A handwritten signature in black ink, reading "Sherrilyn A. Ifill". The signature is fluid and cursive, with the first name "Sherrilyn" being more prominent and the last name "Ifill" following in a similar style.

Sherrilyn A. Ifill  
President and Director Counsel  
NAACP Legal Defense and Educational Fund, Inc.

Cc: The Honorable Mitch McConnell, Senate Majority Leader

March 3, 2016

The President  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

We write to you as scholars of American history, politics, and the law. We express our dismay at the unprecedented breach of norms by the Senate majority in refusing to consider a nomination for the Supreme Court made by a president with eleven months to serve in the position. We believe the idea that a “lame duck” president should not submit a nominee when there is a vacancy on the highest court in the land is a novel and absurd notion, as is the claim that for eighty years or more, no Supreme Court vacancy occurring in an election year has been filled before the election.

In fact it is standard practice when a vacancy occurs on the Supreme Court to have a president, whatever the stage in his term, to nominate a successor and have the Senate consider it. And standard practice (with limited exception) has been for the Senate, after hearings and deliberation, to confirm the president’s choice, regardless of party control, when that choice is deemed acceptable to a Senate majority. The most recent example, of course, is Justice Anthony Kennedy, confirmed by a Senate with a Democratic Party majority in February of 1988, during President Ronald Reagan’s last year. It is true that Kennedy was nominated in November, 1987, but that is irrelevant—and, of course, the Senate commendably expedited the time between nomination and confirmation despite the election ahead.

The claims of an eighty-year precedent by Republican Senate leaders are artfully phrased deliberately to exclude the current situation, which itself is new: it is rare for a justice to die in office, and even more rare for that to happen in a presidential election year. History, however, is replete with instances where a vacancy on the Supreme Court was filled during a presidential election year. In 1912, a nominee of President Taft was confirmed to fill the vacancy created by the death of John Marshall Harlan; in 1916, Woodrow Wilson had two nominees confirmed by the Senate; in 1932, President Roosevelt had a nominee confirmed after Oliver Wendell Holmes retired; FDR had another vacancy filled with confirmation by the Senate in 1940.

President Eisenhower picked William Brennan in 1956 to fill a vacancy and used his recess appointment power to install Brennan, who was subsequently confirmed by a Senate controlled by Democrats in 1957. It is important to note that there was no objection to Eisenhower’s use of the recess appointment—there was instead a widespread recognition that it was bad to have a Supreme Court operate for months without its full complement of nine members.

True, Lyndon Johnson’s nomination of Abe Fortas to be Chief Justice, made in 1968, was blocked by the Senate via an extended filibuster. But there was at the time no vacancy on the Court; Chief Justice Warren stayed on until his successor could be confirmed, and Fortas was an associate justice. While some senators did object to Fortas on the grounds that it was an election year, most of the objections were based on ideology and ethical considerations. And it is important to note

that the Fortas nomination was considered by the Senate and there were votes on the floor, even if those were votes on cloture.

Divided government can bring sharp differences of opinion about the qualifications and character of nominees to the Supreme Court. But consider the precedent set by a Democratic Senate with the highly contentious nomination of Clarence Thomas. The Senate Judiciary Committee deadlocked 7-7 on his nomination—but instead of letting the nomination die, the committee voted 13-1 to allow the full Senate to make the decision. Thomas ultimately was confirmed by a narrow margin with no filibuster.

If we accept the logic that decisions made by “lame duck” presidents are illegitimate or are to be disregarded until voters make their choice in the upcoming election, that begs both the questions of when lame duck status begins (after all, a president is technically a “lame duck” from the day of inauguration), and why senators up for reelection at the same time should not recuse themselves from decisions until the voters have decided whether to keep them or their partisans in office.

It is technically in the power of the Senate to engage in aggressive denial on presidential nominations. But we believe that the Framers’ construction of the process of nominations and confirmation to federal courts, including the Senate’s power of “advice and consent,” does not anticipate or countenance an obdurate refusal by the body to acknowledge or consider a president’s nominee, especially to the highest court in the land. The refusal to hold hearings and deliberate on a nominee at this level is truly unprecedented and, in our view, dangerous.

We are well aware that politics intervenes when judicial nominations are made, and increasingly reflect the broader partisan and ideological polarization in American politics. We do not believe any party is without blame. But we also recognize that confirmation at all levels of the federal judiciary has been increasingly driven by partisan obstructionism, which has reached a peak during the Obama presidency. The refusal by the Republican Senate to confirm any nominees to the D.C. Circuit Court of Appeals is the poster child for that phenomenon.

The Constitution gives the Senate every right to deny confirmation to a presidential nomination. But denial should come after the Senate deliberates over the nomination, which in contemporary times includes hearings in the Judiciary Committee, and full debate and votes on the Senate floor. Anything less than that, in our view, is a serious and, indeed, unprecedented breach of the Senate’s best practices and noblest traditions for much of our nation’s history.

Respectfully,

**Norman J. Ornstein**

Resident Scholar  
American Enterprise Institute

**Vikram David Amar**

Dean and Iwan Foundation Professor of Law  
University of Illinois College of Law

**Sarah Binder**

Senior Fellow, Governance Studies  
Brookings Institution  
Professor of Political Science  
George Washington University

**Erwin Chemerinsky**

Dean of the School of Law  
Distinguished Professor of Law  
Raymond Pryke Professor of First  
Amendment Law  
University of California, Irvine

**Robert Dallek**

Emeritus Professor, History  
University of California, Los Angeles

**Lee Epstein**

Ethan A.H. Shepley Distinguished  
University Professor  
Washington University, St Louis

**Joel K. Goldstein**

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Saint Louis University School of Law

**Doris Kearns Goodwin**

Presidential Historian

**Mark A. Graber**

Jacob A. France Professor of  
Constitutionalism  
University of Maryland  
Frances King Carey School of Law

**Pamela S. Karlan**

Kenneth and Harle Montgomery Professor  
of Public Interest Law  
Co-Director, Supreme Court Litigation  
Clinic  
Stanford Law School

**David M. Kennedy**

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Emeritus  
Stanford University

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Senior Fellow, Brookings Institution  
Resident Scholar, Institute of Governmental  
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University of California, Berkeley

**James M. McPherson**

George Henry Davis '86 Professor Emeritus  
of United States History  
Princeton University

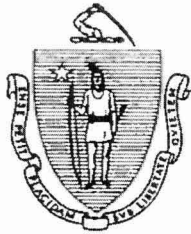
**David M. O'Brien**

Leone Reaves and George W. Spicer  
Professor of Politics  
The University of Virginia

**Geoffrey R. Stone**

Edward H. Levi Distinguished Service  
Professor of Law  
University of Chicago Law School

NOTE: Affiliations are for identification only; views are of the individuals



COMMONWEALTH OF MASSACHUSETTS  
**THE GENERAL COURT**  
STATE HOUSE, BOSTON 02133-1053

RECEIVED MAR 14 2016

March 3, 2016

The Honorable Mitch McConnell, U.S. Senate Majority Leader  
317 Russell Senate Office Building  
Washington DC 20510

The Honorable Harry Reid, U.S. Senate Minority Leader  
522 Hart Senate Office Building  
Washington DC 20510

Dear Mr. Majority Leader McConnell and Mr. Minority Leader Reid:

We, the undersigned Members of the Massachusetts Senate, write to respectfully urge you to timely consider President Barack Obama's next nominee to the Supreme Court.

The people of the Commonwealth deserve to have a fully functioning Supreme Court with nine justices to preside over the hundreds of cases the Court chooses to hear each year. Serving as the final arbiter of the Constitution and the highest court in the nation, the Supreme Court is essential to our constitutional system of government. Its power of judicial review acts as a vital check on the power of the executive and legislative branches of government.

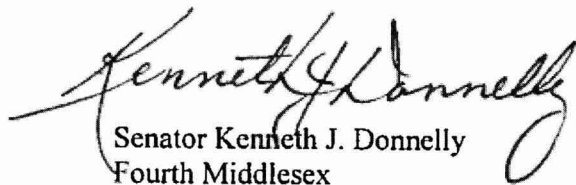
Article II, section 2 of the U.S. Constitution authorizes the president to nominate and, with the advice and consent of the senate, appoint judges to the Supreme Court. Nothing in the Constitution limits the president's power to nominate and appoint judges to the Supreme Court in the final year of his or her term or in an election year. In fact, there are several recent examples in history where a judge has been successfully nominated, confirmed and appointed to the Supreme Court in the year preceding a presidential election, including:

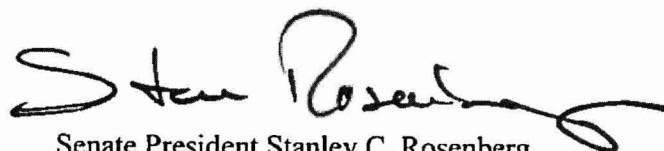
- Justice Anthony Kennedy by President Reagan;
- Justice John Paul Stevens by President Ford;
- Justice Frank Murphy by President Franklin Roosevelt;
- Justice Benjamin Cardozo by President Hoover;
- Justices Louis Brandeis and John Clarke by President Wilson; and
- Justice Mahlon Pitney by President Taft.


The tragic and unexpected passing of Justice Antonin Scalia has left a vacancy on the Supreme Court since February 13. Failing to timely consider a nominee to fill that vacancy for partisan political reasons undermines the plain meaning and intent of the Constitution and

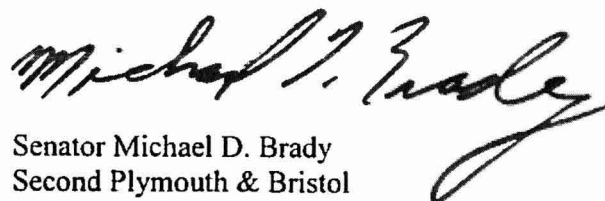
serves as a profound disservice to the American people. As such, we respectfully urge you to swiftly and diligently fulfill your constitutional responsibility by granting a fair hearing and a timely vote to President Obama's next nominee to the Supreme Court.


Sincerely,

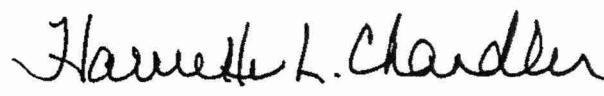
  
Senator Kenneth J. Donnelly  
Fourth Middlesex

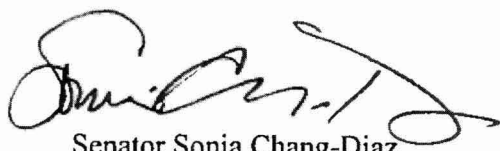
  
Senate President Stanley C. Rosenberg  
Hampshire, Franklin & Worcester

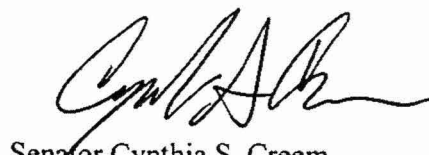
  
Senator Michael J. Barrett  
Third Middlesex

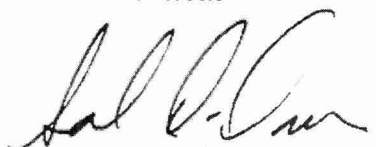
  
Senator Michael D. Brady  
Second Plymouth & Bristol

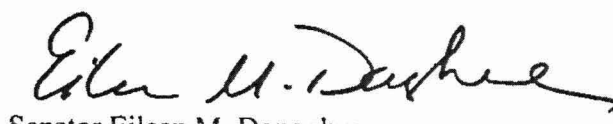
  
Senator William M. Brownsberger  
Second Suffolk & Middlesex

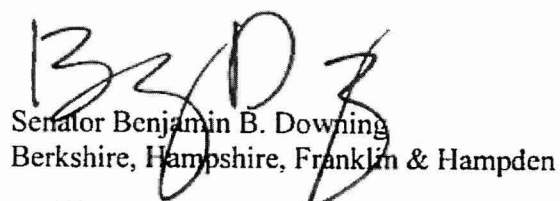
  
Senator Harriette L. Chandler  
First Worcester


  
Senator Sonia Chang-Diaz  
Second Suffolk

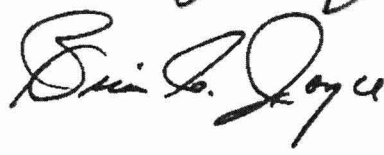
  
Senator Cynthia S. Creem  
First Middlesex & Norfolk

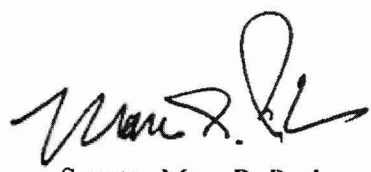
  
Senator Sal N. DiDomenico  
Middlesex & Suffolk

  
Senator Eileen M. Donoghue  
First Middlesex

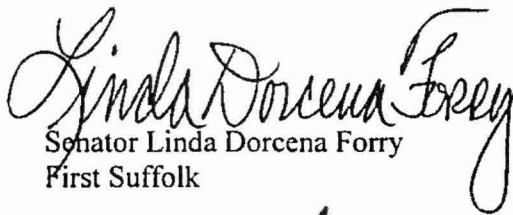
  
Senator Benjamin B. Downing  
Berkshire, Hampshire, Franklin & Hampden

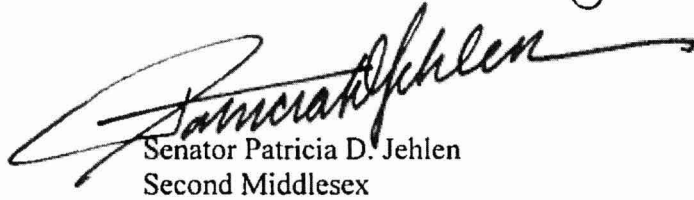
  
Senator James B. Eldridge  
Middlesex & Worcester

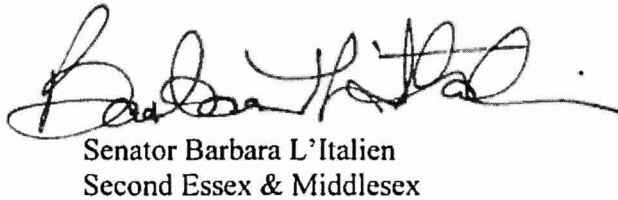
  
Senator Brian A. Joyce  
Norfolk, Bristol & Plymouth

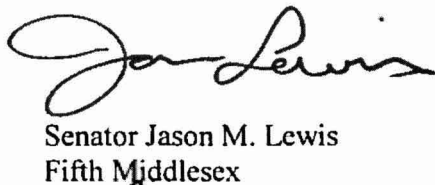
  
Senator Marc R. Pacheco  
First Plymouth & Bristol

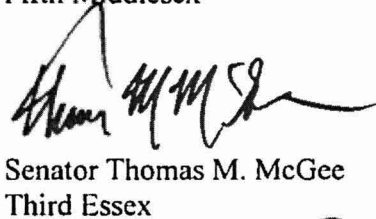


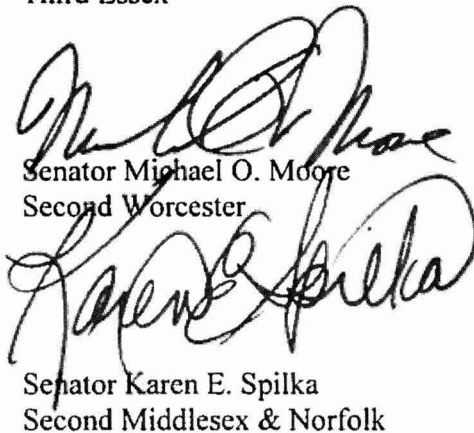
  
Senator Linda Dorcena Forry  
First Suffolk

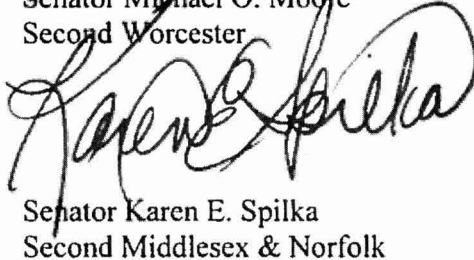
  
Senator Patricia D. Jehlen  
Second Middlesex

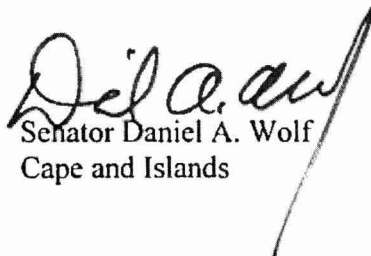
  
Senator Barbara L'Italien  
Second Essex & Middlesex

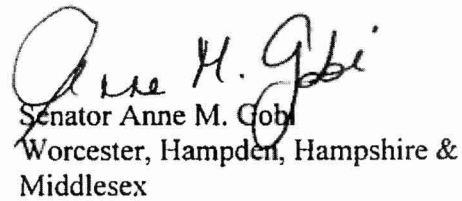
  
Senator Jason M. Lewis  
Fifth Middlesex

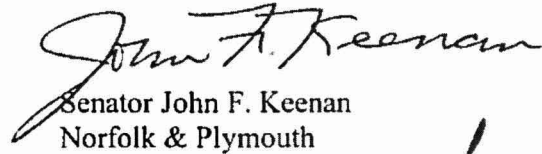
  
Senator Thomas M. McGee  
Third Essex

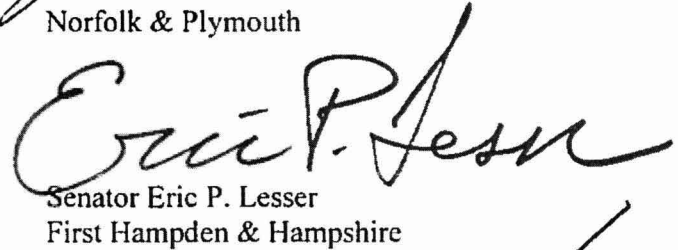
  
Senator Michael O. Moore  
Second Worcester

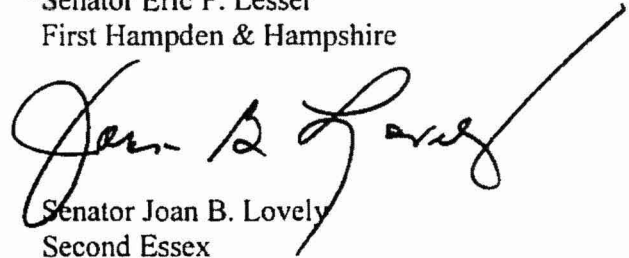
  
Senator Karen E. Spilka  
Second Middlesex & Norfolk

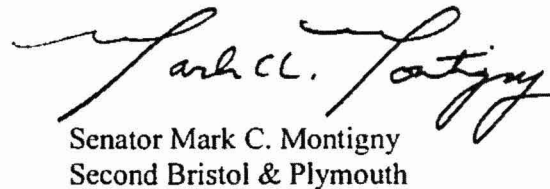
  
Senator Daniel A. Wolf  
Cape and Islands

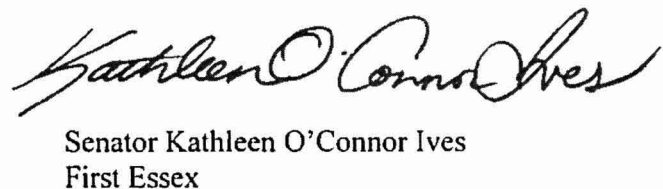
  
Senator Anne M. Gobi  
Worcester, Hampden, Hampshire &  
Middlesex

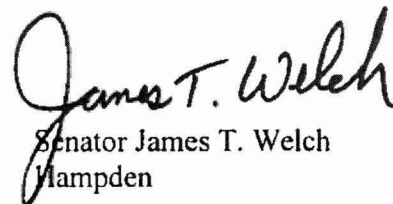
  
Senator John F. Keenan  
Norfolk & Plymouth

  
Senator Eric P. Lesser  
First Hampden & Hampshire

  
Senator Joan B. Lovely  
Second Essex

  
Senator Mark C. Montigny  
Second Bristol & Plymouth

  
Senator Kathleen O'Connor Ives  
First Essex

  
Senator James T. Welch  
Hampden

cc: The Honorable Charles Grassley, Chairman, U.S. Senate Judiciary Committee

The Honorable Patrick Leahy, Ranking Member, U.S. Senate Judiciary  
Committee

The Honorable Edward Markey, U.S. Senate

The Honorable Elizabeth Warren, U.S. Senate

Hon. Mitch McConnell  
U.S. Senate Majority Leader  
317 Russell Senate Office Building  
Washington, DC 20510

Hon. Charles Grassley  
Chairman, U.S. Senate Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, DC 20510

Hon. Harry Reid  
U.S. Senate Minority Leader  
522 Hart Senate Office Building  
Washington, DC 20510

Hon. Patrick Leahy  
Ranking Member, U.S. Senate Committee on the Judiciary  
437 Russell Senate Office Building  
Washington, DC 20510

Dear Majority Leader McConnell, Judiciary Committee Chairman Charles Grassley, Minority Leader Harry Reid, and Judiciary Committee Ranking Member Patrick Leahy:

As scholars deeply committed to the fair administration of justice, upholding the rule of law, and educating future generations of the legal profession, the undersigned professors of law urge you to fulfill your constitutional duty to give President Barack Obama's Supreme Court nominee a prompt and fair hearing and a timely vote.

The Senate's obligation in this circumstance is clear. Under Article II of the Constitution, the president "shall appoint . . . judges to the Supreme Court," and the Senate's role is to provide "advice and consent." Yet before the president has even made a nomination to fill the current vacancy, a number of senators have announced that they will not perform their constitutional duty. Instead, they plan to withhold advice and consent until the next president is sworn in nearly a year from now. This preemptive abdication of duty is contrary to the process the framers envisioned in Article II, and threatens to diminish the integrity of our democratic institutions and the functioning of our constitutional government.

President Obama was elected to a four-year term in 2012. According to the Constitution, that term has more than 300 days remaining. There is no exception to the Constitution holding that the president lacks the authority or duty to appoint justices to the Supreme Court because he is in the last year of his presidency. In fact, six justices have been confirmed in presidential-election years since 1900, including Louis Brandeis, Benjamin Cardozo, and Republican-appointee Anthony Kennedy, who was confirmed by a Democratically-controlled Senate during President Ronald Reagan's last year in office.

A long-term vacancy jeopardizes the Supreme Court's ability to resolve disputed questions of federal law, causing uncertainty and hampering the administration of justice across the country. Typically, the Supreme Court resolves disagreement among the lower courts to establish national uniformity on important legal issues. But the Court fails in this essential function when eight sitting justices divide evenly 4-4, leaving the matter undecided or forcing reconsideration of it when the Court returns to full strength. If the Senate refuses to consider President Obama's nominee, the potential for deadlock on major constitutional and statutory issues will persist for at least the better part of two terms.

The Senate must not defeat the intention of the Framers by failing to perform its constitutional duty. The Senate Judiciary Committee should hold a prompt and fair hearing and the full Senate should hold a timely vote on the president's nominee.

Sincerely<sup>1</sup>  
The Undersigned

Cc: Members of the United States Senate

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<sup>1</sup> Organizational affiliation for all signatories is included for identification purposes only; individuals represent only themselves, not the institutions where they are teaching or other organizations in which they are active.

William Andreen	University of Alabama School of Law
Norman J. Singer	University of Alabama School of Law
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Cyndi Nance	University of Arkansas School of Law
Susan Schneider	University of Arkansas School of Law
Paul Bender	Arizona State University, Sandra Day O'Connor College of Law
Myles Lynk	Arizona State University, Sandra Day O'Connor College of Law
Michal Belknap	California Western School of Law
Jessica Fink	California Western School of Law
Glenn C. Smith	California Western School of Law
Jan Stiglitz	California Western School of Law
Marisa Cianciarulo	Chapman University School of Law
Theodore Seto	Loyola Law School, Los Angeles
Barbara Babcock	Stanford Law School
Mark G. Kelman	Stanford Law School
Deborah Rhode	Stanford Law School
Marjorie Cohn	Thomas Jefferson School of Law
Julie Greenberg	Thomas Jefferson School of Law
Richard Winchester	Thomas Jefferson School of Law
Herma Kay	UC Berkeley School of Law
Rose Cuison Villazor	UC Davis School of Law
Richard Frank	UC Davis School of Law
Lesley McAllister	UC Davis School of Law
Leticia Saucedo	UC Davis School of Law
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Alejandro Camacho	UC Irvine School of Law
Erwin Chemerinsky	UC Irvine School of Law
Catherine Fisk	UC Irvine School of Law
Carrie Menkel-Meadow	UC Irvine School of Law
Richard Abel	UCLA School of Law
Luz Herrera	UCLA School of Law
Christine Littleton	UCLA School of Law
Joanna Schwartz	UCLA School of Law
Christina Chong	University of San Francisco School of Law
Tim Iglesias	University of San Francisco School of Law
Richard Sakai	University of San Francisco School of Law
Carol Wilson	University of San Francisco School of Law
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Ariela J. Gross	University of Southern California Gould School of Law
Gregory C. Keating	University of Southern California Gould School of Law
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Michael S. Mireles	University of the Pacific, McGeorge School of Law
John Cary Sims	University of the Pacific, McGeorge School of Law

Neil Cogan	Whittier Law School
KK DuVivier	University of Denver Sturm College of Law
Loftus Becker	University of Connecticut School of Law
Sara Bronin	University of Connecticut School of Law
Timothy Everett	University of Connecticut School of Law
Stephen Wizner	Yale Law School
Nancy Abramowitz	American University Washington College of Law
Wil Burns	American University Washington College of Law
Brandon Butler	American University Washington College of Law
Michael Carroll	American University Washington College of Law
Angela Davis	American University Washington College of Law
Christine Farley	American University Washington College of Law
Sean Flynn	American University Washington College of Law
John Heywood	American University Washington College of Law
David Hunter	American University Washington College of Law
Deena Hurwitz	American University Washington College of Law
Peter Jaszi	American University Washington College of Law
Elizabeth Keith	American University Washington College of Law
Elliott Milstein	American University Washington College of Law
Jennifer Mueller	American University Washington College of Law
Victoria Phillips	American University Washington College of Law
Jamie Raskin	American University Washington College of Law
Ira P. Robbins	American University Washington College of Law
Herman Schwartz	American University Washington College of Law
William Snape, III	American University Washington College of Law
William Yeomans	American University Washington College of Law
Hope Babcock	Georgetown University Law Center
Peter Edelman	Georgetown University Law Center
Susan Ross	Georgetown University Law Center
Phyllis Goldfarb	The George Washington University Law School
Cynthia Lee	The George Washington University Law School
Susan Goldberg	Widener University School of Law
David Hodas	Widener University School of Law
Serena Williams	Widener University School of Law
Rachel Deming	Barry University Dwayne O. Andreas School of Law
Markita D. Cooper	Florida A&M University College of Law
William D. Henslee	Florida A&M University College of Law
Nise Nekheba	Florida A&M University College of Law
Kalyani Robbins	Florida International University College of Law
Kathy Cerminara	Nova Southeastern University Law Center
Olympia Duhart	Nova Southeastern University Law Center
Michael Flynn	Nova Southeastern University Law Center
Joseph D. Harbaugh	Nova Southeastern University Law Center

Joel Mintz	Nova Southeastern University Law Center
Stuart Freeman	Stetson University College of Law
Rebecca Trammell	Stetson University College of Law
Mary Jane Angelo	University of Florida, Levin College of Law
George Dawson	University of Florida, Levin College of Law
Christine Klein	University of Florida, Levin College of Law
David Abraham	University of Miami School of Law
Elizabeth Iglesias	University of Miami School of Law
Helen de Haven	Atlanta's John Marshall Law School
Martha Albertson Fineman	Emory University School of Law
Johan van der Vyver	Emory University School of Law
Ellen Taylor	Georgia State University College of Law
Suzianne Painter-Thorne	Mercer University School of Law
David T. Ritchie	Mercer University School of Law
Scott Titshaw	Mercer University School of Law
Ronald Brown	The University of Hawaii at Manoa William S. Richardson School of Law
Virginia E Hench	The University of Hawaii at Manoa William S. Richardson School of Law
Charles Lawrence	The University of Hawaii at Manoa William S. Richardson School of Law
Mari Matsuda	The University of Hawaii at Manoa William S. Richardson School of Law
Andrea Charlow	Drake University Law School
Matthew Dore	Drake University Law School
Mark Kende	Drake University Law School
David McCord	Drake University Law School
Nancy Hauserman	University of Iowa College of Law
Linda Kerber	University of Iowa College of Law
James Macdonald	University of Idaho College of Law
Joan Steinman	Chicago-Kent College of Law
Leonard Cavise	DePaul University College of Law
Sumi Cho	DePaul University College of Law
Ted Donner	Loyola University Chicago School of Law
Allen Shoenberger	Loyola University Chicago School of Law
Marc Falkoff	Northern Illinois University College of Law
Nancy C. Loeb	Northwestern University School of Law
Sylvia Neil	Northwestern University School of Law
Christopher T. Sheean	Northwestern University School of Law
Cliff Zimmerman	Northwestern University School of Law
Patricia McCubbin	Southern Illinois University School of Law
Michael G. Heyman	The John Marshall Law School
Anthony Niedwiecki	The John Marshall Law School
Albert Alschuler	University of Chicago Law School
Jennifer Drobac	Indiana University Maurer School of Law
Carwina Weng	Indiana University Maurer School of Law
Florence Roisman	Indiana University School of Law - Indianapolis

Joseph Bauer	Notre Dame Law School
Rosalie Levinson	Valparaiso University School of Law
Joyce Mccray Pearson	Kansas University School of Law
William Westerbeke	Kansas University School of Law
Daniel Weddle	University of Missouri–Kansas City School of Law
Sharlene Boltz	Northern Kentucky University Salmon P. Chase College of Law
Judith Fischer	University of Louisville, Louis D. Brandeis School of Law
Ariana Levison	University of Louisville, Louis D. Brandeis School of Law
Cedric Powell	University of Louisville, Louis D. Brandeis School of Law
Enid Trucios-Haynes	University of Louisville, Louis D. Brandeis School of Law
Lucy S. McGough	Louisiana State University Law Center
M Isabel Medina	Loyola University New Orleans College of Law
Paul Barron	Tulane University Law School
Mark Brodin	Boston College Law School
Zygmunt Plater	Boston College Law School
Ed Richards	Boston College Law School
James Fleming	Boston University School of Law
Linda McClain	Boston University School of Law
Elizabeth Bartholet	Harvard Law School
Harris Freeman	Harvard Law School
Daniel Halperin	Harvard Law School
Charles J. Ogletree	Harvard Law School
Richard Reibstein	Harvard Law School
Laurence H. Tribe	Harvard Law School
Lucie White	Harvard Law School
Libby Adler	Northeastern University School of Law
Kathleen Engel	Suffolk University Law School
Christopher Gibson	Suffolk University Law School
Ilene Seidman	Suffolk University Law School
David Yamada	Suffolk University Law School
Andrew Leong	University of Massachusetts School of Law
Matthew Charity	Western New England University School of Law
Margaret E. Johnson	University of Baltimore School of Law
Douglas L. Colbert	University of Maryland School of Law
Marley Weiss	University of Maryland School of Law
Peter Pitegoff	University of Maine School of Law
Sarah Schindler	University of Maine School of Law
Hannah Brenner	Michigan State University College of Law
Melanie Jacobs	Michigan State University College of Law
Jacqueline Hand	University of Detroit Mercy School of Law
Alicia Alvarez	University of Michigan Law School
Robert Hirshon	University of Michigan Law School
Theodore J. St. Antoine	University of Michigan Law School

David M. Uhlmann	University of Michigan Law School
Christine Ver Ploeg	Mitchell Hamline School of Law
Beverly Balos	University of Minnesota Law School
Mary Fellows	University of Minnesota Law School
Ed Butterfoss	William Mitchell College of Law
Sarah Deer	William Mitchell College of Law
Marie Failingner	William Mitchell College of Law
Jada Fehn	William Mitchell College of Law
Derik Fettig	William Mitchell College of Law
Jim Hilbert	William Mitchell College of Law
Raleigh Levine	William Mitchell College of Law
Denise Roy	William Mitchell College of Law
Anthony Winer	William Mitchell College of Law
Jasmine Abdel-khalik	University of Missouri–Kansas City School of Law
Stanley Foreman	University of Missouri–Kansas City School of Law
Nancy Levit	University of Missouri–Kansas City School of Law
Norman Plate	University of Missouri–Kansas City School of Law
Irma Russell	University of Missouri–Kansas City School of Law
Barbara Wilson	University of Missouri–Kansas City School of Law
Jon Baris	Washington University in St. Louis School of Law
Kelly Dineen	Washington University in St. Louis School of Law
Robert Gatter	Washington University in St. Louis School of Law
William Johnson	Washington University in St. Louis School of Law
Peter Joy	Washington University in St. Louis School of Law
Daniel Mandelker	Washington University in St. Louis School of Law
Elizabeth Pendo	Washington University in St. Louis School of Law
Karen Tokarz	Washington University in St. Louis School of Law
Sidney Watson	Washington University in St. Louis School of Law
Judith Johnson	Mississippi College School of Law
John Bradley	University of Mississippi School of Law
Bari Burke	University of Montana School of Law
Katharine Bartlett	Duke Law School
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Susan Apel	University of New Hampshire School of Law
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Sanford Gaines	University of New Mexico School of Law
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Sara Gordon	William S. Boyd School of Law, University of Nevada, Las Vegas
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Nicole Smith	City University of New York School of Law
Steven Zeidman	City University of New York School of Law
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Subha Narasimhan	Columbia Law School
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Angela Cornell	Cornell University Law School
Robert A. Hillman	Cornell University Law School
Mitchell Lassar	Cornell University Law School
Beth Lyon	Cornell University Law School
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Susan H. Joffe	Hofstra University Law School
Arthur Leonard	New York Law School
Carlin Meyer	New York Law School
Edward Purcell, jr.	New York Law School
Kenji Yoshino	New York Law School
Margot Pollans	Pace Law School
Ann Powers	Pace Law School
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Paula Johnson	Syracuse University College of Law
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Susan Looper-Friedman	Capital University Law School
Roberta Mitchell	Capital University Law School
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Nancy Knauer	Temple University Beasley School of Law
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Sarah Paoletti	University of Pennsylvania Law School
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Fran Ansley	University of Tennessee College of Law
Ellen Wright Clayton	Vanderbilt University Law School
Terry Maroney	Vanderbilt University Law School
Patricia Wilson	Baylor University Law School
Mark E. Steiner	South Texas College of Law
John S. Lowe	Southern Methodist University Dedman School of Law
Jenia Turner	Southern Methodist University Dedman School of Law
John Teeter	St. Mary's School of Law
Michael Green	Texas A&M University School of Law
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Jorge Contreras	University of Utah S.J. Quinney College of Law
Laura Kessler	University of Utah S.J. Quinney College of Law
Clifford J. Rosky	University of Utah S.J. Quinney College of Law
John Ruple	University of Utah S.J. Quinney College of Law
Linda Smith	University of Utah S.J. Quinney College of Law
Debora Threedy	University of Utah S.J. Quinney College of Law
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Darryl Brown	University of Virginia School of Law
Jonathan Cannon	University of Virginia School of Law
Stanley Henderson	University of Virginia School of Law
Corinna Lain	University of Virginia School of Law
Mildred Wigfall Robinson	University of Virginia School of Law
J.H. (Rip) Verkerke	University of Virginia School of Law
Thomas R. White, 3rd	University of Virginia School of Law
Liz Ryan Cole	Vermont Law School
Stephanie Farrior	Vermont Law School
Jessica Scott	Vermont Law School
Joan Vogel	Vermont Law School
Mary Pat Treuthart	Gonzaga University School of Law
Steven Bender	Seattle University School of Law
Carmen Gonzalez	Seattle University School of Law
Henry W. McGee, Jr.	Seattle University School of Law
Madeline Kass	Thomas Jefferson School of Law
Robert H. Aronson	University of Washington School of Law
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Ed Fallone	Marquette University Law School

Jay Gold	Marquette University Law School
Harvey Kurtz	Marquette University Law School
Lisa Mazzie	Marquette University Law School
Richard Reider	Marquette University Law School
Paul Secunda	Marquette University Law School
Craig Fieschko	University of Wisconsin Law School
Ted Finman	University of Wisconsin Law School
Margaret Maroney	University of Wisconsin Law School
Thomas Mitchell	University of Wisconsin Law School
Alan Jay Weisbard	University of Wisconsin Law School
David Janes	West Virginia University College of Law
Michael Duff	University of Wyoming College of Law

March 8, 2016

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Harry Reid  
Minority Leader  
United States Senate  
522 Hart Senate Office Building  
Washington, DC 20510

RE: Filling the Supreme Court Vacancy

Dear Majority Leader McConnell and Minority Leader Reid:

President Obama has announced that he will nominate a replacement for the vacancy on the Supreme Court bench left by the passing of Justice Antonin Scalia, and we believe the President has a clearly prescribed constitutional responsibility to do so. On behalf of our millions of members and supporters, we call on the United States Senate to commit to doing its job by conducting fair confirmation hearings and holding a timely vote on that nominee.

In November 2012, the American public gave the President another four-year term that does not expire until noon on January 20, 2017. In doing so, Americans entrusted in President Obama the right and responsibility to fill any vacancies on the Supreme Court through the entirety of his term. To ensure a fully functioning legal system, the Senate must do its job by carrying out its end of this process. There is ample precedent for a nominee to be confirmed in election years, even when the Senate and White House are controlled by opposite political parties. Willful obstructionism is simply a dereliction of duty, and not what the American people expect from their elected representatives.

For the protection of our air, water, wildlife and lands, a strong and intact judiciary system is as important as ever. In an era when powerful interests who profit from pollution have an unprecedented level of access and influence, it is imperative that we have functioning courts – particularly our nation's highest. With so many critical issues expected to come before the Supreme Court, including those dealing with public health and environmental safeguards, this is not the time to hobble our judiciary with extended vacancies caused by political gamesmanship.

Sincerely,

Cindy Shogan  
Executive Director, Alaska Wilderness League

Kierán Suckling  
Executive Director, Center for Biological Diversity

Robert Wendelgass  
President and CEO, Clean Water Action

Jamie Rappaport Clark  
President and CEO, Defenders of Wildlife

Trip Van Noppen  
President, Earthjustice

Margie Alt  
Executive Director, Environment America

Michael Noble  
Executive Director, Fresh Energy

Erich Pica  
President, Friends of the Earth

Mark Magaña  
President, GreenLatinos

Annie Leonard  
Executive Director, Greenpeace USA

Gene Karpinski  
President, League of Conservation Voters

Rhea Suh  
President, Natural Resources Defense Council

Catherine Thomasson, MD  
Executive Director, Physicians for Social Responsibility

Robert Weissman  
President, Public Citizen

Michael Brune  
Executive Director, Sierra Club

Ken Berlin  
President and CEO, The Climate Reality Project

Peggy M. Shepard  
Executive Director, WE ACT for Environmental Justice

**Open Letter to the President and Senate  
From California Bar Associations Regarding  
Filling the Vacancy on the Supreme Court of the United States**

March 8, 2016

The President  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

The Honorable Mitch McConnell  
United States Senate  
Majority Leader  
317 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Harry Reid  
United States Senate  
Minority Leader  
522 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Chuck Grassley  
United States Senate  
Chair, Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Patrick Leahy  
United States Senate  
Ranking Member, Committee on the Judiciary  
437 Russell Senate Office Building  
Washington, D.C. 20510

Dear Mr. President, Senator McConnell, Senator Reid, Senator Grassley, and Senator Leahy:

We write on behalf of numerous California bar associations and as bar leaders who have taken an oath to defend the Constitution. We call on President Obama to act with deliberate speed to nominate an exceptionally qualified person to the Supreme Court. We also urge the Senate to fulfill its constitutional duty to advise and consent, so that our highest Court may continue to perform its critical function at the apex of our third branch of government.

Article II of the Constitution requires the President, “with the advice and consent of the Senate,” to appoint judges to the Supreme Court. Through this section, the framers placed in the hands of the executive and legislative branches of our government a duty to ensure that the third pillar of our democracy, our courts, would be protected from entanglement in partisan politics. We trust that you will fulfill this duty.

While careful evaluation and reasoned debate regarding the qualifications of the nominee are central to the Senate’s role to advise and consent, it would undermine the rule of law and risk nullifying the Supreme Court’s power to serve its constitutional role as arbiter of disputes, were the confirmation process to be delayed until a new president is inaugurated. Were such a path to be followed, the Court would be forced to sit for two terms, and over a year, with a vacancy. The implications of this course of action would be significant, subjecting people in different regions of the country to different legal standards on matters of constitutional importance and leaving open the specter of an unresolved constitutional crisis. The rule of law requires an ultimate arbiter. The Constitution has placed the Supreme Court in that role.

We ask that you carry out your constitutionally prescribed roles with full fealty to the oaths you have taken so that our Supreme Court is returned to its full membership.

Sincerely,

*Alameda County Bar Association  
Los Angeles County Bar Association  
Lake County Bar Association  
Yolo County Bar Association  
Asian Americans Advancing Justice – Asian Law Caucus  
Asian American Prosecutors Association  
Asian Pacific American Bar Association of Los Angeles County  
Bay Area Lawyers for Individual Freedom – BALIF  
California Employment Lawyers Association  
Charles Houston Bar Association  
East Bay La Raza Lawyers Association  
Filipino Bar Association of Northern California  
Korean American Bar Association of Northern California  
Korean American Bar Association of Southern California  
Marin County Women Lawyers  
Mexican American Bar Association  
Queen’s Bench Bar Association of the San Francisco Bay Area  
Women Lawyers of Alameda County  
David Pasternak, President, California State Bar \**

cc: United States Senators

\*Title for identification only. Signed in personal capacity and not official capacity.



March 9, 2016

President Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Hon. Chuck Grassley  
United States Senate  
Chair, Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, D.C. 20510

Hon. Mitch McConnell  
United States Senate  
Majority Leader  
317 Russell Senate Office Building  
Washington, D.C. 20510

Re: **Statement of Corporate Lawyers, General Counsels and Other Legal Practitioners  
Regarding U.S. Supreme Court Vacancy**

Dear President Barack Obama, Judiciary Committee Chairman Chuck Grassley, and Majority Leader Mitch McConnell:

We write to express concern within the corporate legal and business community regarding the current vacancy on the United States Supreme Court. The U.S. Supreme Court stands at the helm of one of our three branches of government. Every term, critical cases come before the Court concerning issues of great public importance, including cases alleging violations of the Constitution or federal law. The Supreme Court also considers cases implicating the interests of major corporations, private-sector organizations and businesses across the country. The impact of a stalemate at the Supreme Court may have a profound effect on our economy, creating uncertainty for the financial industry, major corporate employers, as well as small businesses.

When a vacancy on the Court arises, the Constitution is clear. Article II, Section 2 states that the President “shall nominate, and by and with the advice and consent of the Senate, shall appoint. . . judges of the Supreme Court.” U.S. Constitution, Article II, Section 2, Clause 2. Though the Senate may ultimately choose not to consent to the President’s nominee, it would be unprecedented for the Senate to refuse to perform its “advice and consent” role in this context. Not only does the Constitution direct the sitting President to nominate an individual to fill a vacancy on the Court no matter whether it is an election year, nearly one third of all Presidents have nominated a justice in an election year who was eventually confirmed.

Indeed, there is historical precedent for confirming a nominee in an election year. Six Justices have been confirmed in presidential election years since 1900, including Justices

Kennedy (1988), Murphy (1940), Cardozo (1932), Clarke (1916), Brandeis (1916), and Pitney (1912).

Each Term, approximately 7,000-8,000 new cases are filed with the Court. On average, the Court will grant plenary review in about 80 of those cases. An additional 100 cases will be disposed of without such review. In light of the substantial activity that comes before the Court each term, it is imperative that the Court be able to resolve conflicting decisions among the federal circuits and establish uniform interpretation of law to guide the work of lower courts across the country. Allowing the Court to proceed for two terms with an open seat would be unprecedented and have damaging collateral consequences that would be felt across our entire federal judicial system. The Court would be unable to act if it were divided in any case without a majority. Such an untoward situation would also negatively impact the business environment and the economy of the country. The corporate legal community and business interests represented herein seek the assurances that come with a fully staffed nine-member Court.<sup>1</sup>

We encourage the President to exercise his constitutional responsibility to nominate a successor to the late Associate Justice Antonin Scalia. We also encourage the Senate to fulfill its constitutional role and grant that nominee fair consideration and a full Senate floor vote.

Respectfully,

The Undersigned<sup>2</sup>

Alan K. Zeigler	Birmingham	AL	Bradley Arant Boult Cummings LLP
Angela Holt	Huntsville	AL	Bradley Arant Boult Cummings LLP
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Dylan Black	Birmingham	AL	
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Emily S. Craft	Huntsville	AL	
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J.S. "Chris" Christie, Jr.	Birmingham	AL	
Jessica Givens	Birmingham	AL	Bradley Arant Boult Cummings LLP
Kathleen Manson	Huntsville	AL	
Kay K. Bains	Birmingham	AL	

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<sup>1</sup> The number of justices has now stood at nine for nearly 150 years. Federal law expressly provides that the Court "shall consist" of nine members. Congress settled on a nine member Court in 1869 after considerable deliberation and debate and has stood by its judgment for nearly 150 years.

<sup>2</sup> Firm and corporate names are provided for identification purposes only and do not indicate support or endorsement by the firm or corporation.

Keith Covington	Vestavia Hills	AL	
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Stuart J. Frentz	Birmingham	AL	Bradley Arant Boult Cummings LLP
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Claudine Meredith-Goujon	New York	NY	
Conrad K. Harper	New York	NY	
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Jennifer Scullion	New York	NY	
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John H. Doyle, III	Bridgehampton	NY	
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Richard Sussman	New York	NY	
Robert A. Atkins	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Robert C. Fleder	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Robert L. Laufer	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Rossie E. Turman, III	New York	NY	
Roswell B. Perkins	New York	NY	
Salvatore Gogliormella	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Sanford ("Sandy") Litvack	New York	NY	Hogan Lovells LLC
Sidney S. Rosdeitcher	New York	NY	
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Todd R. Chandler	New York	NY	
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Warren Seay, Jr.	DeSoto	TX	Arent Fox LLP
Alison Andersen	Alexandria	VA	
Donald B. Mitchell, Jr.	Arlington	VA	
Eva Pulliam	Springfield	VA	
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Justine K. Mitchell	Ashburn	VA	Arent Fox LLP
Siahn Rein	Alexandria	VA	
Stephen Rosenblatt	Fairfax	VA	Sheet Metal Workers' National Pension Fund
Greg Landis	Seattle	WA	
Michael Licata	Seattle	WA	Savitt, Bruce, & Willey LLP
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David G. Walsh	Madison	WI	
Franklyn Gimbel	Milwaukee	WI	Gimbel, Reilly, Guerin & Brown
Harvey L. Temkin	Verona	WI	Reinhart Law Firm
John Skilton	Madison	WI	
Randall Crocker	Milwaukee	WI	
Timothy Burns	Madison	WI	

# **National Hispanic Leadership Agenda**

March 9, 2016

The Honorable Mitch McConnell  
Senate Majority Leader  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Chuck Grassley  
Chairman, Senate Judiciary  
135 Hart Senate Office Building  
Washington, DC 20510

## **Re: Urgent Need for the Senate to Consider and Vote on a Presidential Supreme Court Nominee**

Dear Senators:

On behalf of the National Hispanic Leadership Agenda (NHLA), a coalition of 40 leading Hispanic advocacy organizations in the United States, we write to express our deep frustration with your current position to refuse to allow proper vetting, a hearing, or a floor vote for any nominee made by the President to the Supreme Court of the United States. Our coalition includes a broad range of perspectives, as indicated by the members listed, and the board voted **unanimously** to urge you to fulfill your constitutional duties and move a candidate through the process to an eventual floor vote, once a nominee has been named.

The consideration of Supreme Court nominees is a fundamental constitutional responsibility of the Senate. The refusal to hold a hearing or meet with a nominee to the Supreme Court is a clear dereliction of duty, and inconsistent with normal order of the Senate. The politicization of the current vacancy and the President's duty to nominate a Supreme Court justice violates the very principles of order and rule of law that uphold our Constitution and values as a nation.

The Constitution states that with advice and consent of the Senate, the President shall appoint justices to the Supreme Court.<sup>1</sup> This language provides no constitutional or legal argument for the Senate to deny any deliberation, hearing, or vote on a nominee to the Court. By choosing to act in direct contradiction of its constitutional responsibilities, this Senate is choosing to place politics above the rule of law and justice, which is a threat to the democratic process each Senator has vowed to protect.

The impact of Senate inaction will ultimately fall on everyday Americans, whose issues and cases appear before the Court. The nation relies on a fully-staffed and fully-functioning Court to resolve matters conclusively and in a timely manner. Saddling the court with only eight justices for possibly two terms, potentially preventing the court from making decisive rulings on those questions of utmost concern to the public, can only be perceived as a self-serving maneuver that compromises our justice system and constitutional values. The Latino community is acutely aware of the need for a fully constituted Court because of the cases now and in the future that directly affect us, including a number of cases coming out of Texas, where Latinos make up 38 percent of the population.

### **MEMBER ORGANIZATIONS**

Alianza Americas  
American G.I. Forum  
ASPIRA Association  
Avance Inc.  
Casa de Esperanza; National Latin@ Network  
Congressional Hispanic Caucus Institute  
Cuban American National Council  
Farmworker Justice  
Hispanic Association of Colleges & Universities  
Hispanic Federation  
Hispanic National Bar Association  
Inter-University Program for Latino Research  
Labor Council for Latin American Advancement  
Latino Justice PRLDEF  
League of United Latin American Citizens  
MANA, A National Latina Organization  
Mexican American Legal Defense and Educational Fund  
National Association of Hispanic Federal Executives  
National Association of Hispanic Publications  
NALEO Educational Fund  
National Association of Latino Independent Producers  
National Conference of Puerto Rican Women, Inc.  
National Council of La Raza  
National Hispana Leadership Institute  
National Hispanic Caucus of State Legislators  
National Hispanic Council on Aging  
National Hispanic Environmental Council  
National Hispanic Foundation for the Arts  
National Hispanic Media Coalition  
National Hispanic Medical Association  
National Institute for Latino Policy  
National Latina Institute for Reproductive Health  
National Puerto Rican Coalition  
Presente.org  
SER Jobs for Progress National  
Southwest Voter Registration Education Project  
United States Hispanic Chamber of Commerce  
United States Hispanic Leadership Institute  
United States-Mexico Chamber of Commerce  
U.S.- Mexico Foundation

<sup>1</sup> U.S. CONST. art. II, § 2, cl. 2.



There remains more than sufficient time to consider, vet, and vote on a nominee. Over the past four decades, the time from nomination to confirmation has averaged 67 days. Moreover, no nominee has waited more than 125 days for a confirmation vote. We fully expect the Senate to live up to its fundamental constitutional obligations by holding a hearing and taking a vote on the President's nominee, and to reverse your position of obstructionism and delay. Just as millions of Americans go to work each day, the Senate must do the same, and must show the country that it is capable of carrying out its basic functions for the good of the country.

Sincerely,



Hector Sanchez  
Chair, NHLA  
Executive Director, LCLAA



Thomas A. Saenz  
Vice-Chair, NHLA  
President and General Counsel, MALDEF



## **Uphold the Constitution: Fairly Consider the President's Nomination for the Supreme Court Vacancy**

March 10, 2016

RECEIVED MAR 10 2016

Dear Senator:

The American Association of University Women (AAUW) joined the nation in mourning the passing of U.S. Supreme Court Justice Antonin Scalia who served on the court for nearly 30 years. The Supreme Court has pending cases that will greatly affect the everyday lives of women and their families, and Justice Scalia's untimely death creates a vacancy at a critical juncture. It is in the face of losing such a legal giant that we remember how fortunate we are, as a nation, to have a constitutional process to see us smoothly through this transition.

On behalf of the 170,000 bipartisan members and supporters of AAUW, I urge you uphold the U.S. Constitution by moving forward to fairly and expeditiously consider any nominee put forward by President Obama to fill the Supreme Court vacancy. In so doing, the American people will be reassured that a fully staffed court will be available to deliver this year's critical Supreme Court decisions.

The Appointments Clause of the Constitution lays out three sequential acts in order to fill a vacancy. First, the nomination of the president, second the advice and consent of the U.S. Senate, and third the appointment by the president. There is no exception for the president to refuse to nominate a successor nor is there an exception for senators to refuse to provide advice and consent. Public statements by Senate Majority Leader Mitch McConnell and Republican members of the Senate Judiciary Committee that they will take no action on any nominee put forward by the president, before a nominee has even been named, impedes the function of government to ensure equal access to a fully functioning judicial system.<sup>i</sup> AAUW and our members feel compelled to urge all senators to reject cynical tactics to preemptively disqualify the president's nominee or to obstruct any nominee for purely partisan reasons.

Proponents of obstruction have attempted to mislead the public by claiming there is not enough time left in the president's term and that appointments should not occur in election years. These statements are false. Not only are these tactics a strong indication of the naked partisanship of this obstructionism, but it severely undermines the function of the Supreme Court and the integrity of the Senate. Waiting until January 2017 for a replacement would mean that for the first time in history, the Supreme Court would be without its full complement of justices for a good portion of two terms of the court.

Retired Supreme Court Justice Sandra Day O'Connor responded quickly to this delay tactic by stating, "I don't agree [with waiting] ... I think we need somebody there now to do the job and let's get on with it."<sup>ii</sup> Editorial boards from Colorado, Wisconsin, Ohio, New

Hampshire, Pennsylvania, Iowa, Kentucky, Illinois, Maine and all over the country agree that the Senate should follow the Constitution and fairly consider President Obama's nominee.<sup>iii</sup> Furthermore, a majority of Americans (56%) say the Senate should hold hearings and vote on President Obama's choice to fill the vacancy.<sup>iv</sup>

**AAUW urges senators to demand that Majority Leader McConnell and the Republican members of the Judiciary Committee rethink this unprecedented course of obstructionism and fairly consider any nominee put forward by President Obama to fill the Supreme Court vacancy. Furthermore, the full Senate should be given the opportunity for an “up or down” vote on any qualified nominee.**

Votes associated with this issue may be included in the AAUW Action Fund *Congressional Voting Record* for the 114th Congress. If you have any questions or need additional information, feel free to contact me at 202/785-7720, or Erin Prangley, associate director for government relations, at 202/728-7730.

Sincerely,



Lisa M. Maatz  
Vice President for Government Relations

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<sup>i</sup> Herszenhorn, David. “G.O.P. Senators Say Obama Supreme Court Pick Will be Rejected.” New York Times. February 24, 2016. [http://www.nytimes.com/2016/02/24/us/politics/supreme-court-nomination-obama.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&\\_r=0](http://www.nytimes.com/2016/02/24/us/politics/supreme-court-nomination-obama.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&_r=0)

<sup>ii</sup> Zorthian, Julia. “Sandra Day O’Connor Says Obama Should Name New Supreme Court Justice.” Time. February 18, 2016. <http://time.com/4228800/oconnor-scalia-obama-supreme-court/>

<sup>iii</sup> Sugermeli, Glenn. “Nearly 200 Editorial Boards Across the Country Agree: This year the Senate Should Hold a hearing and Vote on Nominee to Fill Scalia Supreme Court Vacancy – State by State Links/Excerpts.” February 23, 2016. [http://www.judgingtheenvironment.org/press/op\\_ed/op-ed-full-texts/Editorials-on-Scalia-vacancy-by-state-Feb-23-2016.pdf](http://www.judgingtheenvironment.org/press/op_ed/op-ed-full-texts/Editorials-on-Scalia-vacancy-by-state-Feb-23-2016.pdf)

<sup>iv</sup> Pew Research Center. “Majority of Public Wants Senate to Act on Obama’s Court Nominee.” February 22, 2016. <http://www.people-press.org/2016/02/22/majority-of-public-wants-senate-to-act-on-obamas-court-nominee/>

Hon. Mitch McConnell  
U.S. Senate Majority Leader  
317 Russell Senate Office Building  
Washington, DC 20510

Hon. Charles Grassley  
Chairman, U.S. Senate Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, DC 20510

Hon. Harry Reid  
U.S. Senate Minority Leader  
522 Hart Senate Office Building  
Washington, DC 20510

Hon. Patrick Leahy  
Ranking Member, U.S. Senate Committee on the Judiciary  
437 Russell Senate Office Building  
Washington, DC 20510

Dear Majority Leader McConnell, Judiciary Committee Chairman Charles Grassley, Minority Leader Harry Reid, and Judiciary Committee Ranking Member Patrick Leahy:

As scholars deeply committed to the fair administration of justice, upholding the rule of law, and educating future generations of the legal profession, the undersigned professors of law urge you to fulfill your constitutional duty to give President Barack Obama's Supreme Court nominee a prompt and fair hearing and a timely vote.

The Senate's obligation in this circumstance is clear. Under Article II of the Constitution, the president "shall appoint . . . judges to the Supreme Court," and the Senate's role is to provide "advice and consent." Yet before the president has even made a nomination to fill the current vacancy, a number of senators have announced that they will not perform their constitutional duty. Instead, they plan to withhold advice and consent until the next president is sworn in nearly a year from now. This preemptive abdication of duty is contrary to the process the framers envisioned in Article II, and threatens to diminish the integrity of our democratic institutions and the functioning of our constitutional government.

President Obama was elected to a four-year term in 2012. According to the Constitution, that term has more than 300 days remaining. There is no exception to the Constitution holding that the president lacks the authority or duty to appoint justices to the Supreme Court because he is in the last year of his presidency. In fact, six justices have been confirmed in presidential-election years since 1900, including Louis Brandeis, Benjamin Cardozo, and Republican-appointee Anthony Kennedy, who was confirmed by a Democratically-controlled Senate during President Ronald Reagan's last year in office.

A long-term vacancy jeopardizes the Supreme Court's ability to resolve disputed questions of federal law, causing uncertainty and hampering the administration of justice across the country. Typically, the Supreme Court resolves disagreement among the lower courts to establish national uniformity on important legal issues. But the Court fails in this essential function when eight sitting justices divide evenly 4-4, leaving the matter undecided or forcing reconsideration of it when the Court returns to full strength. If the Senate refuses to consider President Obama's nominee, the potential for deadlock on major constitutional and statutory issues will persist for at least the better part of two terms.

The Senate must not defeat the intention of the Framers by failing to perform its constitutional duty. The Senate Judiciary Committee should hold a prompt and fair hearing and the full Senate should hold a timely vote on the president's nominee.

Sincerely<sup>1</sup>  
The Undersigned

Cc: Members of the United States Senate

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<sup>1</sup> Organizational affiliation for all signatories is included for identification purposes only; individuals represent only themselves, not the institutions where they are teaching or other organizations in which they are active.

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Patricia Wilson	Baylor University Law School
Mark E. Steiner	South Texas College of Law
John S. Lowe	Southern Methodist University Dedman School of Law
Jenia Turner	Southern Methodist University Dedman School of Law
John Teeter	St. Mary's School of Law
Michael Green	Texas A&M University School of Law
Jensie L. Anderson	University of Utah S.J. Quinney College of Law
Alan Clarke	University of Utah S.J. Quinney College of Law
Jorge Contreras	University of Utah S.J. Quinney College of Law
Laura Kessler	University of Utah S.J. Quinney College of Law
Clifford J. Rosky	University of Utah S.J. Quinney College of Law
John Ruple	University of Utah S.J. Quinney College of Law
Linda Smith	University of Utah S.J. Quinney College of Law
Debora Threedy	University of Utah S.J. Quinney College of Law
Ann C. Hodges	University of Richmond School of Law
Darryl Brown	University of Virginia School of Law
Jonathan Cannon	University of Virginia School of Law
Stanley Henderson	University of Virginia School of Law
Corinna Lain	University of Virginia School of Law
Mildred Wigfall Robinson	University of Virginia School of Law
J.H. (Rip) Verkerke	University of Virginia School of Law
Thomas R. White, 3rd	University of Virginia School of Law
Liz Ryan Cole	Vermont Law School
Stephanie Farrior	Vermont Law School
Jessica Scott	Vermont Law School
Joan Vogel	Vermont Law School
Mary Pat Treuthart	Gonzaga University School of Law
Steven Bender	Seattle University School of Law
Carmen Gonzalez	Seattle University School of Law
Henry W. McGee, Jr.	Seattle University School of Law
Madeline Kass	Thomas Jefferson School of Law

Robert H. Aronson	University of Washington School of Law
Susan Bay	Marquette University Law School
Ed Fallone	Marquette University Law School
Jay Gold	Marquette University Law School
Harvey Kurtz	Marquette University Law School
Lisa Mazzie	Marquette University Law School
Richard Reider	Marquette University Law School
Paul Secunda	Marquette University Law School
Craig Fieschko	University of Wisconsin Law School
Ted Finman	University of Wisconsin Law School
Margaret Maroney	University of Wisconsin Law School
Thomas Mitchell	University of Wisconsin Law School
Alan Jay Weisbard	University of Wisconsin Law School
David Janes	West Virginia University College of Law
Michael Duff	University of Wyoming College of Law

March 9, 2016

President Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Hon. Chuck Grassley  
United States Senate  
Chair, Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, D.C. 20510

Hon. Mitch McConnell  
United States Senate  
Majority Leader  
317 Russell Senate Office Building  
Washington, D.C. 20510

**Re: Statement of Corporate Lawyers, General Counsels and Other Legal Practitioners  
Regarding U.S. Supreme Court Vacancy**

Dear President Barack Obama, Judiciary Committee Chairman Chuck Grassley, and Majority Leader Mitch McConnell:

We write to express concern within the corporate legal and business community regarding the current vacancy on the United States Supreme Court. The U.S. Supreme Court stands at the helm of one of our three branches of government. Every term, critical cases come before the Court concerning issues of great public importance, including cases alleging violations of the Constitution or federal law. The Supreme Court also considers cases implicating the interests of major corporations, private-sector organizations and businesses across the country. The impact of a stalemate at the Supreme Court may have a profound effect on our economy, creating uncertainty for the financial industry, major corporate employers, as well as small businesses.

When a vacancy on the Court arises, the Constitution is clear. Article II, Section 2 states that the President “shall nominate, and by and with the advice and consent of the Senate, shall appoint. . . judges of the Supreme Court.” U.S. Constitution, Article II, Section 2, Clause 2. Though the Senate may ultimately choose not to consent to the President’s nominee, it would be unprecedented for the Senate to refuse to perform its “advice and consent” role in this context. Not only does the Constitution direct the sitting President to nominate an individual to fill a vacancy on the Court no matter whether it is an election year, nearly one third of all Presidents have nominated a justice in an election year who was eventually confirmed.

Indeed, there is historical precedent for confirming a nominee in an election year. Six Justices have been confirmed in presidential election years since 1900, including Justices

Kennedy (1988), Murphy (1940), Cardozo (1932), Clarke (1916), Brandeis (1916), and Pitney (1912).

Each Term, approximately 7,000-8,000 new cases are filed with the Court. On average, the Court will grant plenary review in about 80 of those cases. An additional 100 cases will be disposed of without such review. In light of the substantial activity that comes before the Court each term, it is imperative that the Court be able to resolve conflicting decisions among the federal circuits and establish uniform interpretation of law to guide the work of lower courts across the country. Allowing the Court to proceed for two terms with an open seat would be unprecedented and have damaging collateral consequences that would be felt across our entire federal judicial system. The Court would be unable to act if it were divided in any case without a majority. Such an untoward situation would also negatively impact the business environment and the economy of the country. The corporate legal community and business interests represented herein seek the assurances that come with a fully staffed nine-member Court.<sup>1</sup>

We encourage the President to exercise his constitutional responsibility to nominate a successor to the late Associate Justice Antonin Scalia. We also encourage the Senate to fulfill its constitutional role and grant that nominee fair consideration and a full Senate floor vote.

Respectfully,

The Undersigned<sup>2</sup>

Alan K. Zeigler	Birmingham	AL	Bradley Arant Boult Cummings LLP
Angela Holt	Huntsville	AL	Bradley Arant Boult Cummings LLP
Anne Knox Averitt	Birmingham	AL	Bradley Arant Boult Cummings LLP
Anne Marie Seibel	Birmingham	AL	
Daniel F. Murphy	Birmingham	AL	Bradley Arant Boult Cummings LLP
Dawn Helms Sharff	Birmingham	AL	
Denetra Hartzog	Birmingham	AL	
Dorothy D. Pak	Birmingham	AL	
Dylan Black	Birmingham	AL	
E. Cutter Hughes	Huntsville	AL	Bradley Arant Boult Cummings LLP
Emily S. Craft	Huntsville	AL	
Gary L. Howard	Birmingham	AL	Bradley Arant Boult Cummings LLP
J.S. "Chris" Christie, Jr.	Birmingham	AL	
Jessica Givens	Birmingham	AL	Bradley Arant Boult Cummings LLP
Kathleen Manson	Huntsville	AL	
Kay K. Bains	Birmingham	AL	

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<sup>1</sup> The number of justices has now stood at nine for nearly 150 years. Federal law expressly provides that the Court "shall consist" of nine members. Congress settled on a nine member Court in 1869 after considerable deliberation and debate and has stood by its judgment for nearly 150 years.

<sup>2</sup> Firm and corporate names are provided for identification purposes only and do not indicate support or endorsement by the firm or corporation.

Keith Covington	Vestavia Hills	AL	
Laura P. Washburn	Birmingham	AL	
Margaret Darlene Ehinger	Huntsville	AL	
Patrick H. Graves, Jr.	Huntsville	AL	
Paul S. Ware	Birmingham	AL	
Polly H. Robb	Huntsville	AL	
Stuart J. Frentz	Birmingham	AL	Bradley Arant Boult Cummings LLP
Susan Doss	Birmingham	AL	
Tammy Baker	Birmingham	AL	Jackson Lewis P.C.
Virginia C. Patterson	Birmingham	AL	Bradley Arant Boult Cummings LLP
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Daniel C. Barr	Phoenix	AZ	Perkins Coie LLP
David Rosenbaum	Phoenix	AZ	Osborn Maledon, PA
Evan Schlack	Scottsdale	AZ	Martin & Bonnett, PLLC
Judith K. Weiss	Phoenix	AZ	
Karin Aldama	Phoenix	AZ	Perkins Coie LLP
Katherine May	Phoenix	AZ	Perkins Coie LLP
Paul F. Eckstein	Phoenix	AZ	Perkins Coie LLP
Sarah Gonski	Phoenix	AZ	
Priya Sanger	San Francisco	CA	Google Inc.
Andrew Hinton	Mountain View	CA	Google Inc.
Aaron Jacoby	Beverly Hills	CA	Arent Fox LLP
Bradley S. Phillips	Los Angeles	CA	Munger, Tolles & Olson LLP
Brian K. Landsberg	Sacramento	CA	
Collin Seals	Glendale	CA	Arent Fox LLP
Diane B. Roldán	Los Angeles	CA	Arent Fox LLP
Donna Mo	Los Angeles	CA	
Douglas E. Hewlett, Jr.	Los Angeles	CA	
Dr. Sandra Thompson	Irvine	CA	Slater Hersey & Lieberman, LLP
Erin Muellenberg	Yorba Linda	CA	
Frank Petrilli	Oakland	CA	Arent Fox LLP
Ian Gore	Los Angeles	CA	
Jack W. Londen	San Francisco	CA	Morrison & Foerster LLP
Jacob R. Sorensen	San Francisco	CA	Pillsbury Winthrop Shaw Pittman LLP
Khaldoun Baghdadi	San Francisco	CA	
Kim Boras	Los Angeles	CA	
Larry Tabb	Los Angeles	CA	Musick Peeler & Garrett
Loren Kieve	San Francisco	CA	Kieve Law Offices
Louis R. Cohen	Newport Beach	CA	Arent Fox LLP
Mark Field	Los Angeles	CA	
Michael Traynor	Berkeley	CA	
Peter Graham Cohn	Petaluma	CA	
Sharon D. Mayo	Mill Valley	CA	Arnold & Porter LLP
Susan J. Field	Los Angeles	CA	Musick Peeler & Garrett
Thomas V. Loran III	San Francisco	CA	

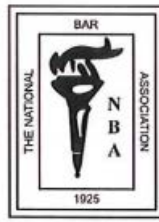


Vincent A. Ruiz	San Francisco	CA	Ruiz Law Group
Jeff Leung	San Francisco	CA	
Laura Smolowe	Los Angeles	CA	
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Marjorie Sussman	Avon	CT	Allied World Assurance Company
Owen M. Fiss	Hamden	CT	Yale University
Jane Sherburne	Washington	DC	Sherburne PLLC
Alex Young K. Oh	Washington	DC	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Andrew Solinger	Washington	DC	
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Tammy Mitchell	Washington	DC	
Doneene Damon	Wilmington	DE	
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Harold E. Franklin, Jr.	Atlanta	GA	
R. William Ide	Atlanta	GA	

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Jack Block	Chicago	IL	
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Lowell Sachnoff	Chicago	IL	Reed Smith LLP
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Laura Wilkinson	Potomac	MD	
Nicholas T. Christakos	Rockville	MD	
Mary Clay Morgan	Jackson	MI	
Portia L. Roberson	Detroit	MI	City of Detroit
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Richard Pins	Minneapolis	MI	Stinson Leonard Street, LLP
Robert McDuff	Jackson	MI	McDuff & Byrd
W. Wayne Drinkwater	Ridgeland	MI	
Wendy Mullins	Jackson	MI	
Kevin Armstrong	Minneapolis	MN	DST Market Services, LLC.
Meghan Worthington-Largent	St. Louis	MO	Arent Fox LLP
Peter D. Van Cleve	St. Louis	MO	
Nancy Campbell	Jackson	MS	Baptist Premier Medical Clinic
Roy D. Campbell, III	Jackson	MS	Bradley Arant Boult Cummings LLP
			Retired Vice Chairman, Chief Legal Officer and Secretary, Colgate-Palmolive Company
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April Miller Boise	Charlotte	NC	
Dana C. Lumsden	Charlotte	NC	Bradley Arant Boult Cummings LLP
Marion Cowell	Charlotte	NC	
Naho Kobayashi	Charlotte	NC	
Robert E. Harrington	Charlotte	NC	
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David L. Harris	South Orange	NJ	

Laura A. Kaster	Princeton	NJ	
Lawrence M. Lawson	Freehold	NJ	McElroy Deutsch Mulvaney & Carpenter
Matthew Trokenheim	South Orange	NJ	Arent Fox LLP
Rachel Witriol	Maplewood	NJ	
Hank Bjorklund	Manhasset	NY	Retired, Chase Bank, NA
A. Mark Getachew	New York	NY	Willkie Farr & Gallagher LLP
Adam Klein	New York	NY	Outten & Golden LLP
Allen G. Reiter	Larchmont	NY	Arent Fox LLP
Asra Syed	Brooklyn	NY	Arent Fox LLP
Audrey Yayon-Dauvet	New York	NY	
Bettina B. Plevan	New York	NY	Proskauer Rose LLP
Bruce A. Gutenplan	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Carl Reisner	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Christine Berry	New York	NY	Berry Campbell
Christopher Boehning	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Claudine Meredith-Goujon	New York	NY	
Conrad K. Harper	New York	NY	
Daniel F. Kolb	New York	NY	
David A. Crichlow	New York	NY	
David T. Washburn	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
David W. Brown	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Edward Labaton	New York	NY	Labaton Sucharow LLP
Elizabeth H. Cohen	New York	NY	Arent Fox LLP
Eric Goodison	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Evelyne Kay Carson	New York	NY	Arent Fox LLP
Gerard E. Harper	New York	NY	
Jay Greenfield	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Jennifer Scullion	New York	NY	
John C. Ericson	New York	NY	
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John Kiernan	New York	NY	
John Nonna	New York	NY	Squire Patton Boggs
Lisa Mazure	Armonk	NY	
Louise Firestone	New York	NY	
Marc Gary	New York	NY	
Marjorie Press Lindblom	New York	NY	Kirkland & Ellis LLP
Marsha E. Simms	New York	NY	
Martha Campbell	New York	NY	Berry Campbell Gallery
Martin Flumenbaum	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Mary Shepard Hughes	Huntsville	NY	
Michelle Marsh	New York	NY	
Monica K. Thurmond	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Moses Silverman	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Neale M. Albert	New York	NY	
Nicholas Groombridge	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP

Paulette M. Caldwell	New York	NY	New York University School of Law
Richard A. Rosen	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Richard Krainin	New York	NY	Arent Fox LLP
Richard Sussman	New York	NY	
Robert A. Atkins	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Robert C. Fleder	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Robert L. Laufer	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Rossie E. Turman, III	New York	NY	
Roswell B. Perkins	New York	NY	
Salvatore Gogliormella	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Sanford ("Sandy") Litvack	New York	NY	Hogan Lovells LLC
Sidney S. Rosdeitcher	New York	NY	
Stanley J. Brown	New York	NY	
Stuart Robinowitz	New York	NY	Paul Weiss Rifkind Wharton & Garrison LLP
Todd R. Chandler	New York	NY	
Victoria B. Bjorklund	New York	NY	Retired, Simpson Thacher & Bartlett LLP
David Smith	Philadelphia	PA	Schnader Harrison Segal & Lewis LLP
Michael Lehr	Philadelphia	PA	
Bob Hannon	Nashville	TN	
Chris Bowles	Nashville	TN	
Christopher E. Thorsen	Nashville	TN	Bradley Arant Boult Cummings LLP
David K. Taylor	Nashville	TN	Bradley Arant Boult Cummings LLP
E. Berry Holt	Nashville	TN	Bradley Arant Boult Cummings LLP
Heather Wright	Nashville	TN	
Daniella D. Landers	Houston	TX	Katten Muchin Rosenman LLP
Warren Seay, Jr.	DeSoto	TX	Arent Fox LLP
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Donald B. Mitchell, Jr.	Arlington	VA	
Eva Pulliam	Springfield	VA	
G. Allen Dale	McLean	VA	Law Offices of G. Allen Dale PLLC
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Siahn Rein	Alexandria	VA	
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Greg Landis	Seattle	WA	
Michael Licata	Seattle	WA	Savitt, Bruce, & Willey LLP
Robert S. Mucklestone	Seattle	WA	
Brian Butler	Madison	WI	Stafford Rosenbaum LLP
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Harvey L. Temkin	Verona	WI	Reinhart Law Firm
John Skilton	Madison	WI	
Randall Crocker	Milwaukee	WI	
Timothy Burns	Madison	WI	



March 10, 2016

The Honorable Charles E. Grassley  
U.S. Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Patrick Leahy  
U.S. Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

RE: Filling the Vacancy on the Supreme Court of the United States

Dear Chairman Grassley and Ranking Member Leahy:

The Hispanic National Bar Association (HNBA), the National Asian Pacific American Bar Association (NAPABA), the National Bar Association (NBA), the National LGBT Bar Association (National LGBT Bar), and the National Native American Bar Association (NNABA) have a long history of supporting judicial nominees from both Democratic and Republican presidents. Our non-partisan organizations represent the interests of almost two hundred thousand lawyers, judges, and legal professionals of diverse backgrounds across the country.

As professional legal membership organizations and representatives of diverse American attorneys, we have consistently maintained that it is both the President's and the Senate's constitutional responsibility to ensure that our courts are fully functioning.

The President has the constitutional duty to nominate Article III judges—including U.S. Supreme Court Justices—"by and with the Advice and Consent of the Senate," under Article II, Section 2 of the U.S. Constitution.

Article II, Section 2 of the U.S. Constitution further makes it clear that the Senate fulfills its constitutional responsibility to ensure the effective functioning of our courts by giving that nominee fair consideration on the merits and a timely up or down vote.

The Constitutional obligations of the President and the Senate hold true irrespective of who is in the White House, the identity of the individual nominee, or the political affiliation of any individual Senator.

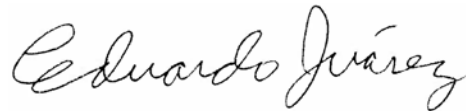
As attorneys, we are deeply concerned about the effect and impact that the current rhetoric and stated positions will have on the effective operation of the judiciary, and on public perception of the American justice system. A full complement of Supreme Court Justices is critical to ensuring the smooth functioning of the judiciary and our legal system. The mere prospect of two terms of the Court without a full bench opens the door to uncertainty in the legal system. Any actuality of an incomplete Court will hamper the administration of justice. The Court must be able to resolve questions of constitutional and statutory importance and resolve disagreements between the lower courts to ensure uniformity of federal law. As an institution, the Court must be complete in order to be able to do so effectively. Delay in the Supreme Court's ability to fulfill its duties caused by intentionally leaving the Court incomplete will have a direct impact on the legal rights of Americans, individuals and businesses of all backgrounds, across the country, and further erode public confidence in our legal system and in the functioning of our democracy.

We strongly urge the Senate to uphold its Constitutional duty by holding a fair hearing and timely vote on any Supreme Court nominee to ensure the effective operation of our judicial system.

Sincerely,



Robert Maldonado  
President  
Hispanic National Bar Association



Eduardo Juarez  
President  
National LGBT Bar Association



Jin Y. Hwang  
President  
National Asian Pacific American Bar Association



Linda Benally  
President  
National Native American Bar Association



Benjamin Crump  
President  
National Bar Association

**THE ATTORNEYS GENERAL OF**

**CALIFORNIA ♦ CONNECTICUT ♦ DELAWARE  
DISTRICT OF COLUMBIA ♦ HAWAII ♦ ILLINOIS  
IOWA ♦ MAINE ♦ MARYLAND ♦ MASSACHUSETTS ♦ MINNESOTA  
MISSOURI ♦ NEW MEXICO ♦ NEW YORK ♦ NORTH CAROLINA  
OREGON ♦ PUERTO RICO ♦ RHODE ISLAND  
VERMONT ♦ VIRGINIA ♦ WASHINGTON**

March 10, 2016

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Harry Reid  
Minority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Charles Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Patrick Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Leader McConnell, Leader Reid, Chairman Grassley and Ranking Member Leahy:

We, the undersigned, are Attorneys General representing 19 states, the District of Columbia and the Commonwealth of Puerto Rico. We are united in the belief that the United States Senate must act promptly to consider a nominee to fill the vacancy on the United States Supreme Court. We believe that a failure to do so would undermine the rule of law and ultimately impair the functioning of state governments within our federal system.

The Constitution clearly sets out the process for filling a Supreme Court vacancy. The President has a duty to make a nomination. President Obama, duly elected twice by the American people, has pledged to do so. The Senate, then, has the responsibility to consider and approve or disapprove the nomination. While simple, this is the law and it should be followed.

Throughout our history, the Senate —without exception— has acted promptly to consider qualified nominees to the Supreme Court. The longest the Senate has ever taken to confirm a President's Supreme Court nominee is 125 days and since 1975, a nominee has, on average, received a vote by the full Senate within 67 days of his or her nomination. Moreover, every nominee since 1875 has received a confirmation hearing. And since 1900, six justices have been confirmed during election years, including Justice Anthony Kennedy, who was confirmed in the final year of the Reagan Administration.

The states and territories have a unique and pressing interest in a full and functioning Supreme Court. We rely on the Supreme Court to resolve questions of federal law, to resolve disputes

between the states, to evaluate the constitutionality of state laws, and to ensure that federal and constitutional law are interpreted and applied uniformly across all states and territories. The Supreme Court not only resolves disputes that implicate States' vital interests, it often does so in closely divided cases.

We urge the Senate to carry out its responsibilities by allowing for full consideration of a qualified nominee to the Supreme Court by holding a hearing and a vote without unnecessary delay.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kamala Harris", on a light yellow background.

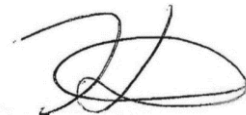
Kamala Harris  
California Attorney General

A handwritten signature in black ink, appearing to read "George Jepsen".

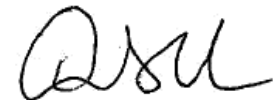
George Jepsen  
Connecticut Attorney General

A handwritten signature in black ink, appearing to read "Matt Denn".

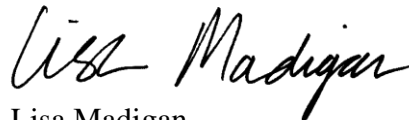
Matt Denn  
Delaware Attorney General

A handwritten signature in black ink, appearing to read "Karl A. Racine".

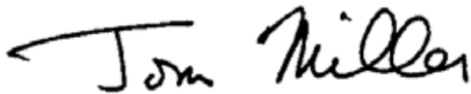
Karl A. Racine  
District of Columbia Attorney General

A handwritten signature in black ink, appearing to read "Douglas Chin".

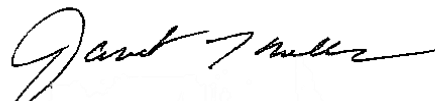
Douglas Chin  
Hawaii Attorney General

A handwritten signature in black ink, appearing to read "Lisa Madigan".

Lisa Madigan  
Illinois Attorney General

A handwritten signature in black ink, appearing to read "Tom Miller".

Tom Miller  
Iowa Attorney General

A handwritten signature in black ink, appearing to read "Janet Mills".

Janet Mills  
Maine Attorney General

A handwritten signature in blue ink, appearing to read "Brian E. Frosh".

Brian Frosh  
Maryland Attorney General

A handwritten signature in blue ink, appearing to read "Maura Healey".

Maura Healey  
Massachusetts Attorney General

A handwritten signature in blue ink, appearing to read "Lori Swanson".

Lori Swanson  
Minnesota Attorney General


A handwritten signature in blue ink, appearing to read "Chris Koster".

Chris Koster  
Missouri Attorney General





Hector Balderas  
New Mexico Attorney General



Eric Schneiderman  
New York Attorney General



Roy Cooper  
North Carolina Attorney General



Ellen F. Rosenblum  
Oregon Attorney General



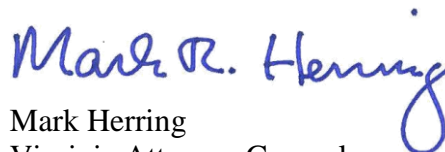
César Miranda  
Puerto Rico Secretary of Justice



Peter F. Kilmartin  
Rhode Island Attorney General



William H. Sorrell  
Vermont Attorney General



Mark Herring  
Virginia Attorney General



Robert W. Ferguson  
Washington Attorney General

March 10, 2016

Senate Majority Leader McConnell  
317 Russell Senate Office Building  
Washington, DC 20510

Senate Judiciary Committee Chair Grassley  
135 Hart Senate Office Building  
Washington, DC 20510

Senate Minority Leader Reid  
522 Hart Senate Office Building  
Washington, DC 20510

Senate Judiciary Committee Ranking Member Leahy  
437 Russell Senate Office Building  
Washington, DC 20510

Dear Senate Majority Leader McConnell, Senate Judiciary Committee Chair Grassley, Senate Minority Leader Reid, and Senate Judiciary Committee Ranking Member Leahy:

We are retired Chief Judges of federal courts of appeal in the D.C. and the Third Circuits., appointed respectively by Democratic and Republican presidents. We write to urge the U.S. Senate to fulfill its constitutional role to advise and consent on a nominee selected by the President to fill the vacancy created by the death of Justice Antonin Scalia in an appropriately expeditious manner. Only in that way can the Supreme Court continue its vital work of declaring and harmonizing national law in our rapidly changing economy and areas of social concern.

Our several decades of judicial service at the Court of Appeals level have instilled a profound awareness of the critical need for a full component of nine Justices on the Supreme Court. This number is not only necessary to resolve conflicts among circuits but, just as important, it is essential to the Court's primary function of declaring what the law is in a rapidly moving society where crises frequently arise that must be decided at the highest judicial level whether conflicts in lower courts exist or not. How should captures from the terrorist conflicts be treated; should executions of domestic criminals be carried out or stayed; should regulations of monumental environmental impact and enormous cost be allowed to proceed or be stopped? These are decisions that should not be imposed by an equally divided Court on one part of the country but not other parts solely on the basis of the geographical boundaries of a circuit. In this term alone, decisions on the right to vote, the right of immigrants to resist deportation, of women to access assistance in reproductive decisions, and of public servants to organize effectively are slated for Supreme Court resolution and could well produce an even split on the Court. Surely the drafters of our Constitution did not envision a country whose citizens would not be treated equally under law by the Highest Court in such matters. Single instance recusals of Justices on grounds of conflict of interest or illness, inevitable though they may be, have been infrequent; Justice Scalia wrote "[e]ven one unnecessary recusal impacts the functioning of the Court," *Cheney v. United States District Court*, 541 U.S. 913 (2004)(memorandum of Justice Scalia), and in no case have they lasted over substantial parts of two terms, as could occur here were the Senate to delay action on a nominee until after the November 2016 presidential election.

Article II of the Constitution states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint...Judges of the supreme Court." There is no express exception for years when a Presidential election is pending and no reason to infer one. There is instead ample precedent for confirming Justices during an election year; Justices Kennedy, Cardozo and Brandeis

were all confirmed in an election year. To recognize such an exception would set a dangerous precedent, and invite attempts to extend it to other situations where the Executive and Legislative branches are in political conflict with one another. The Supreme Court would be in danger of becoming a bargaining chip in such situations, although the Framers expressly sought to make it independent of the political desires or ambitions of the other branches.

It is in that spirit of reverence toward the intent of the drafters of the Framers, and against the backdrop of our experience with the workings of the federal courts of appeal and their special relationship with the Supreme court, that we urge you as leaders of the Senate conscientiously to fulfill your “advise and consent” role on any forthcoming nomination by the President to fill Justice Scalia’s seat on the Supreme Court.

Sincerely,

A handwritten signature in cursive script, reading "Patricia M. Wald".

Hon. Patricia M. Wald  
Retired Chief Judge  
United States Court of Appeals  
for the District of Columbia Circuit

A handwritten signature in cursive script, reading "John J. Gibbons".

Hon. John J. Gibbons  
Retired Chief Judge  
United States Court of Appeals  
for the Third Circuit



LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS  
UNDER LAW

*A nonprofit, nonpartisan legal organization formed at the request of President Kennedy in 1963*



Hon. Mitch McConnell  
U.S. Senate Majority Leader  
317 Russell Senate Office Building  
Washington, DC 20510

Hon. Charles Grassley  
Chairman, U.S. Senate Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, DC 20510

Hon. Harry Reid  
U.S. Senate Minority Leader  
522 Hart Senate Office Building  
Washington, DC 20510

Hon. Patrick Leahy  
Ranking Member, U.S. Senate Committee on the Judiciary  
437 Russell Senate Office Building  
Washington, DC 20510

March 11, 2016

Dear Majority Leader McConnell, Judiciary Committee Chairman Charles Grassley, Minority Leader Harry Reid, and Judiciary Committee Ranking Member Patrick Leahy:

The Lawyers' Committee for Civil Rights Under Law writes to express grave concern regarding the stated refusal of Republican members of the Senate Judiciary Committee to consider any nominee put forth by the President to fill the current vacancy on the United States Supreme Court. The position that you and other members of the Senate Judiciary Committee have taken, that the right to fill the vacancy on the Court should be reserved for the next President, who will not take office until late January 2017, is unprecedented. This position is inconsistent with the roles of the President and the Senate as envisioned by the Framers of the Constitution. It threatens to create legal uncertainty that would be unfair to all Americans, particularly minorities, and would create a dangerous historical precedent. We urge all members of the Senate Judiciary Committee to carry out their constitutional role and responsibility.

Our Constitution states that the President “shall nominate, and with the advice and consent of the Senate shall appoint... Judges of the supreme Court...” U.S. Constitution, Article II, Section 2, Clause 2. This provision imposes duties on both the President and the Senate to fill vacancies on the U.S. Supreme Court, on the President to nominate and on the Senate to provide advice and consent, to assure that the nominee the President appoints is qualified for the position.

The President has made clear his intention to faithfully carry out this obligation and has publicly expressed his commitment to appointing an eminently qualified nominee with “an independent mind, rigorous intellect, impeccable credentials, and a record of excellence and integrity.” Refusal by the Senate to participate in the advice and consent process would undermine the separation of powers by abdicating the Senate’s constitutional role and preventing the President from carrying out his duty to fill the vacant office. As we explain in the attached analysis, based on our historical review, the Senate has never taken the position that it would flatly refuse to consider a nominee under the current circumstances.

The purpose of the appointments clause is to fill the offices needed to operate the government the Framers created. This is confirmed by the Framers’ insertion of the recess appointments clause to give the President authority to unilaterally fill vacancies temporarily, if the Senate is in recess and unable to provide advice and consent. A refusal to provide advice and consent, when it is in session, would thus frustrate the entire purpose of the appointments clause.

This understanding of the distinction between the President’s and Senate’s duties under the appointments clause is confirmed by Alexander Hamilton, in Federalist No. 76. Hamilton explains that “no [person] can be appointed but on the President’s previous nomination”—because the President is best qualified to do so.

Hamilton also makes clear the limits on the role of the Senate’s advice and consent power, which is to “act as an excellent check on a spirit of favoritism in the President, and would tend greatly to prevent the appointment of characters from State prejudice, from family connections, from personal attachment, or from a view to popularity” – not to prevent the President from appointing any person. Most importantly, Hamilton acknowledges that while “[the President’s] nomination may be overruled [by the Senate] ... yet it can only be to make place for another nomination by [the President] himself. The person ultimately appointed must be the object of his [the President’s] preference, although perhaps not in the first degree.”

The Constitution includes no language that calls for a suspension of the President’s constitutional obligations during a presidential election year, nor any other period. While vacancies on our Court during election years are rare, there are nonetheless many examples of Senate confirmation of Supreme Court nominees in an election year. John Adams’ appointment in 1800 of John Marshall, a month before Jefferson’s inauguration, the confirmation of Woodrow Wilson’s appointment of Brandeis in 1916 during Wilson’s election year contest with Charles Evans Hughes, the confirmation of Herbert Hoover’s nomination of Cardozo in 1932, shortly before the election of

Franklin Roosevelt, and the 1988 confirmation of Reagan's nomination of Justice Kennedy – a clear historical record supporting the need for the Senate to participate and vote on President Obama's nominee. These confirmations also provide strong historical precedent for the Senate's consideration of a nominee under the current circumstances and make clear the need for the Senate to consider President Obama's nominee.

Finally and most importantly, our nation requires clarity and certainty with respect to cases concerning the interpretation of the Constitution and application of federal civil rights laws. Historically, the Supreme Court, with a full complement of nine justices,<sup>1</sup> has proven to be the most important forum for resolving disputes regarding the legal rights that lie at the heart of our democracy, particularly those affecting protected minority groups.

Many of the most momentous pending cases during the current term involve highly controversial issues which might have been decided on a 5-4 basis, but could now result in a 4-4 tie or chosen for reargument until an unknown date after the vacancy were filled. Ties would leave controversial lower court decisions in place, but the state of the law uncertain; reargument could result in delays into the 2017 term. Such cases now pending could include issues involving race conscious admissions policies in higher education, the interpretation and application of "one person, one vote" in the apportionment and redistricting process, the constitutionality of state restrictions on abortion providers, the validity of executive actions affecting millions of undocumented immigrants, Dodd-Frank whistle blower protections, among others. It also could affect cases to be granted review for the October 2016 term. Leaving the vacancy unfilled also could affect future applications to the Court for emergency stays involving imminent executions of persons on death row or enforcement of government regulations—and of particular importance in this election year-- voting rights and election law decisions.

Indeed, numerous cases demonstrate the important role that the Court has played in resolving significant civil rights cases, often by a narrow 5-4 decision. *See Texas Department of Housing v. Inclusive Communities Project, Inc.*, 575 U.S. --- (2015) (In a 5-4 decision, the Supreme Court held that disparate impact claims are cognizable under the Fair Housing Act); *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. --- (2015) (In a 5-4 decision, the Supreme Court issued a ruling concerning Alabama's state legislative redistricting maps; the Court reinstated plaintiff's racial gerrymandering claim under the Equal Protection Clause and remanded the case to a lower court to evaluate the on a district-by-district basis rather than a statewide basis); *Lafler v. Cooper*, 566 U.S. --- (2012) (In a 5-4 decision, the Supreme Court ruled that a defendant could challenge his conviction resulting from his reliance upon his public defender's alleged ineffective assistance of counsel);

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<sup>1</sup> The importance of having a tie-breaking vote to resolve critical issues of civil rights law extends to cases in which the Court decides against the Lawyers' Committee's position. *See*, for example, *Alexander v. Sandoval*, 532 U.S. 275 (2001), holding 5-4 that there is no private right of action to enforce disparate-impact regulations promulgated under Title VI; and *Shelby County v. Holder*, 570 U.S. --- (2013), holding 5-4 that Section 5 of the Voting Rights Act of 1965 places an unconstitutional burden on the affected states without sufficient evidence of ongoing civil rights violations.

*Grutter v. Bollinger*, 539 U.S. 306 (2003) (In a 5-4 decision, the Supreme Court held that the Equal Protection Clause does not prohibit public higher education institutions' narrowly tailored use of race in admissions policies to further their compelling interest in obtaining the educational benefits that flow from a diverse student body); *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101 (2002) (In a 5-4 decision, the Supreme Court held that courts may consider the entire scope of a hostile work environment claim under Title VII, including behavior alleged outside the 300 day statutory period, so long as any act contributing to the hostile environment takes place within the statutory period); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (In a 5-4 decision, the Supreme Court held that a post-removal period statute does not permit indefinite detention of the immigrant, but rather requires her release after a reasonable amount of time).

In all these cases, an eight-member Court may have resulted in a 4-4 tie, with the result that the decisions of the lower courts would have been affirmed without binding precedent for the country. The lower court decisions would have remained the law only in their jurisdictions, leaving uncertainty about the state of the law, and in some cases, a conflict among the circuits. Individuals whose lives were directly affected by the principles at stake would have been bound by decisions that were not authoritative. Individuals whose rights were at stake in subsequent cases would have been subject to a climate of legal uncertainty and potential unfairness.

The unfilled seat on the Court could also affect cases to be granted review for the October 2016 term. Leaving the vacancy unfilled also could affect future applications to the Court for emergency stays involving imminent executions of persons on death row or enforcement of government regulations—and of particular importance in this election year-- voting rights and election law decisions.

There are ten months remaining in President Obama's term. If required, the next President will inevitably take some time to choose a nominee, and the Senate will invariably take some time to act. Realistically, a nominee by the next President may not be confirmed until April 2017 or later, resulting in the vacancy resulting from Justice Scalia's death lasting for 14 months or longer. As we explain in the attached analysis, no vacancy during the 20th century has lasted more than a year except for exceptional circumstances caused by the rejection of a nominee. For these reasons, we strongly urge the Senate to carry out its constitutional role by providing full and fair consideration of the President's nominee.

Sincerely,



Kristen Clarke  
President and Executive Director  
Lawyers' Committee for Civil Rights Under Law

cc: Members of the United States Senate



March 10, 2016

Senate Majority Leader McConnell  
317 Russell Senate Office Building  
Washington, DC 20510

Senate Judiciary Committee Chair Grassley  
135 Hart Senate Office Building  
Washington, DC 20510

Senate Minority Leader Reid  
522 Hart Senate Office Building  
Washington, DC 20510

Senate Judiciary Committee Ranking Member Leahy  
437 Russell Senate Office Building  
Washington, DC 20510

Dear Senate Majority Leader McConnell, Senate Judiciary Committee Chair Grassley, Senate Minority Leader Reid, and Senate Judiciary Committee Ranking Member Leahy:

We are retired Chief Judges of federal courts of appeal in the D.C. and the Third Circuits., appointed respectively by Democratic and Republican presidents. We write to urge the U.S. Senate to fulfill its constitutional role to advise and consent on a nominee selected by the President to fill the vacancy created by the death of Justice Antonin Scalia in an appropriately expeditious manner. Only in that way can the Supreme Court continue its vital work of declaring and harmonizing national law in our rapidly changing economy and areas of social concern.

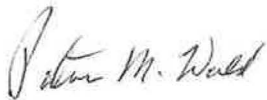
Our several decades of judicial service at the Court of Appeals level have instilled a profound awareness of the critical need for a full component of nine Justices on the Supreme Court. This number is not only necessary to resolve conflicts among circuits but, just as important, it is essential to the Court's primary function of declaring what the law is in a rapidly moving society where crises frequently arise that must be decided at the highest judicial level whether conflicts in lower courts exist or not. How should captures from the terrorist conflicts be treated; should executions of domestic criminals be carried out or stayed; should regulations of monumental environmental impact and enormous cost be allowed to proceed or be stopped? These are decisions that should not be imposed by an equally divided Court on one part of the country but not other parts solely on the basis of the geographical boundaries of a circuit. In this term alone, decisions on the right to vote, the right of immigrants to resist deportation, of women to access assistance in reproductive decisions, and of public servants to organize effectively are slated for Supreme Court resolution and could well produce an even split on the Court. Surely the drafters of our Constitution did not envision a country whose citizens would not be treated equally under law by the Highest Court in such matters. Single instance recusals of Justices on grounds of conflict of interest or illness, inevitable though they may be, have been infrequent; Justice Scalia wrote "[e]ven one unnecessary recusal impacts the functioning of the Court," *Cheney v. United States District Court*, 541 U.S. 913 (2004)(memorandum of Justice Scalia), and in no case have they lasted over substantial parts of two terms, as could occur here were the Senate to delay action on a nominee until after the November 2016 presidential election.

Article II of the Constitution states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint...Judges of the supreme Court." There is no express exception for years when a Presidential election is pending and no reason to infer one. There is instead ample precedent for confirming Justices during an election year; Justices Kennedy, Cardozo and Brandeis

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It is in that spirit of reverence toward the intent of the drafters of the Framers, and against the backdrop of our experience with the workings of the federal courts of appeal and their special relationship with the Supreme court, that we urge you as leaders of the Senate conscientiously to fulfill your “advise and consent” role on any forthcoming nomination by the President to fill Justice Scalia’s seat on the Supreme Court.

Sincerely,

A handwritten signature in cursive script, reading "Patricia M. Wald".

Hon. Patricia M. Wald  
Retired Chief Judge  
United States Court of Appeals  
for the District of Columbia Circuit

A handwritten signature in cursive script, reading "John J. Gibbons".

Hon. John J. Gibbons  
Retired Chief Judge  
United States Court of Appeals  
for the Third Circuit



**Zeta Phi Beta Sorority, Inc.**  
INTERNATIONAL HEADQUARTERS  
1734 New Hampshire Avenue, N.W.  
Washington, D.C. 20009  
202.387.3103

**Mary Breaux Wright**  
INTERNATIONAL PRESIDENT

*Established 1920*

---

March 11, 2016

RECEIVED MAR 11 2016

Dear Ranking Member Leahy:

The members of Zeta Phi Beta Sorority, Inc., representing more than 120,000 professional women across the world, express our strong support for US Senate hearings to confirm President Obama's eventual nominee for the next US Supreme Court Justice.

In the coming months, the Court will continue to debate critical issues including the death penalty, women's health, workers' rights, access to higher education and voting. It is imperative that we have a full Court to hand down decisions on these important cases.

On six previous occasions the Senate has confirmed the President's Supreme Court nominee during an election year. President Barack Obama should be afforded the same opportunity and respect as he carries out his duties in accordance with our governing document--the Constitution of the United States of America.

Since 1920, Zeta Phi Beta Sorority has been committed to improving the lives of our members and our communities. As mentors and teachers, we are keenly aware that we are developing future CEOs, educators, leaders, and Supreme Court Justices, who will carry on the mantles of leadership and justice. Today, we have a responsibility to be their voices, and help create a world where they can flourish and succeed.

President Obama is ready to fulfill his constitutional responsibility to select a qualified nominee. We ask the US Senate to do the same--and urge you to hold hearings on President Obama's eventual nominee, and call for an up or down vote. Our communities are counting on a full court to continue debating the issues which shape our nation, and make America the best it can be for generations to come.

Sincerely,

Mary Breaux Wright  
International President  
Zeta Phi Beta Sorority, Inc.

Monday, March 14, 2016

Dear Majority Leader Mitch McConnell, Minority Leader Harry Reid, Judiciary Committee Chairman Charles Grassley, and Judiciary Committee Ranking Member Patrick Leahy:

As current and former deans of law schools from across this country, we write to urge President Obama and the United States Senate to fulfill their constitutional duties to ensure a fully functioning Supreme Court.<sup>1</sup> As lawyers and professors, we read Article II, Section 2 of the Constitution as directing action without qualification: the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint... judges of the Supreme Court.” As deans and chief administrators for our schools, our respect for the importance of fully functioning institutions compels us to underscore the importance of having a full complement of justices on our nation’s highest court.

The Supreme Court and the system of law over which it presides are materially hampered by having only eight Supreme Court justices for the remainder of this Supreme Court term, and likely for most of the next term. An eight-member Court risks uncertainty and the prospect of numerous 4-4 split decisions. In many cases, the Supreme Court is asked to resolve differences amongst decisions made by the Circuit Courts of Appeals. Split 4-4 decisions would prevent the Supreme Court from fulfilling its role as final arbiter of federal law, permitting federal law to have different meanings in different parts of the country. Such conflict and ambiguity jeopardize respect for the rule of law.

The Senate’s constitutional duty to provide “advice and consent” on the President’s nominee is one of the most important responsibilities for those elected to serve in the Senate. The Senate has no good reason to wait to consider a nominee until after the next president is elected, assumes office, and selects a nominee; such delay poses real harm to individuals, businesses, and the legal system itself. The Senate should fulfill its constitutional duties and established traditions not only to preserve the functioning of our nation’s judicial branch, but also to demonstrate and fulfill the important role of our legislative branch in this process.

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<sup>1</sup> Institutional affiliation for all signatories is included for identification purposes only; individuals represent only themselves, not the institutions where they are or were deans.

We might not all agree on who the ideal nominee might be to fill the current Supreme Court vacancy. Our own personal views and political perspectives differ. We agree, however, on the importance of the President nominating an individual to fill the vacancy and the Senate giving that nominee meaningful consideration by holding hearings and providing an up-or-down vote on the nominee.

Respectfully,

Nicholas W. Allard  
President, Joseph Crea Dean and Professor of Law  
Brooklyn Law School

Michelle J. Anderson  
Dean and Professor of Law  
The City University of New York School of Law

Jessica Berg  
Tom J.E. and Bette Lou Walker Professor of Law, Professor of Bioethics & Public Health and  
Co-Dean  
Case Western Reserve University School of Law

Luke Bierman  
Dean and Professor of Law  
Elon University School of Law

Katherine S. Broderick  
Dean and Professor of Law  
University District of Columbia David A. Clarke School of Law

Jennifer M. Collins  
Judge James Noel Dean and Professor of Law  
Southern Methodist University-Dedman School of Law

Danielle M. Conway  
Dean and Professor of Law  
University of Maine School of Law

Phyllis Crocker  
Dean and Professor of Law  
University of Detroit Mercy School of Law

Darby Dickerson  
Dean and W. Frank Newton Professor of Law  
Texas Tech University School of Law

JoAnne A. Epps  
Dean and Professor of Law  
Temple University Beasley School of Law

Timothy Fisher  
Dean and Professor of Law  
University of Connecticut School of Law

Cynthia L. Fountaine  
Dean and Professor of Law  
Southern Illinois University School of Law

Jon M. Garon  
Dean and Professor of Law  
Nova Southeastern University Shepard Broad College of Law

Mark C. Gordon  
President, Dean and Stephen B. and Lisa S. Bonner Distinguished Chair  
Mitchell Hamline School of Law

Lisa A. Kloppenberg  
Dean and Professor of Law  
Santa Clara University School of Law

U. S. Amb, (ret) Douglas W. Kmiec  
Caruso Chair in Constitutional Law  
Pepperdine University School of Law  
Former Dean, The Catholic University of America Columbus School of Law

Eric Lane  
Dean and Eric J. Schmertz Distinguished Professor of Public Law and Public Service  
Maurice A. Deane School of Law at Hofstra University

Martha Minow  
Morgan and Helen Chu Dean and Professor of Law  
Harvard Law School

Christopher M. Pietruszkiewicz  
Dean and Professor of Law  
Stetson University College of Law

Robert C. Post  
Dean and Sol & Lillian Goldman Professor of Law  
Yale Law School

Susan Westerberg Prager  
Dean, Chief Executive Officer and Professor of Law  
Southwestern Law School

Kathryn Rand  
Dean and Floyd B. Sperry Professor of Law  
Co-Director Institute for the Study of Tribal Gaming Law and Policy  
University of North Dakota School of Law

Margaret Raymond  
Fred W. & Vi Miller Dean and Professor of Law  
University of Wisconsin Law School

Thomas J. Romig  
Dean and Professor of Law  
Washburn University School of Law

Laura Ann Rosenbury  
Dean and Levin, Mabie & Levin Professor of Law  
University of Florida Fredric G. Levin College of Law

Vincent Rougeau  
Dean  
Boston College Law School

Theodore W. Ruger  
Dean and Bernard G. Segal Professor of Law  
University of Pennsylvania Law School

Patricia E. Salkin  
Dean and Professor of Law  
Touro College Jacob D. Fuchsberg Law Center

Michael Scharf  
Director of the Frederick K. Cox International Law Center, Joseph C. Hostetler - BakerHostetler  
Professor of Law and Co-Dean  
Case Western Reserve University School of Law

Niels B. Schaumann  
President and Dean  
California Western School of Law



Cathy R. Silak  
Dean and Professor of Law  
Concordia University School of Law

Nancy Staudt  
Dean and Howard & Caroline Cayne Professor of Law  
Washington University School of Law

Andrew L. Strauss  
Dean and Professor of Law  
University of Dayton School of Law

Deanell Reece Tacha  
Duane and Kelly Roberts Dean and Professor of Law  
Pepperdine University School of Law

Kellye Y. Testy  
Toni Rembe Dean and Professor of Law  
University of Washington School of Law

John Transviña  
Dean  
University of San Francisco School of Law

William M. Treanor  
Dean and Professor of Law  
Georgetown University Law Center

Rachel Van Cleave  
Dean and Professor of Law  
Golden Gate University School of Law

Robert K. Vischer  
Dean and Mengler Chair in Law  
University of St. Thomas School of Law

Gary R. Wade  
Dean and Vice President  
Lincoln Memorial University John J. Duncan School Law

Ronald Weich  
Dean and Professor of Law  
University of Baltimore School of Law

Matthew J. Wilson  
Dean and Professor of Law  
University of Akron School of Law

Frank H. Wu  
Former Chancellor and Dean  
University of California Hastings College of Law

March 14, 2016

The Honorable Charles E. Grassley  
U.S. Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Patrick Leahy  
U.S. Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

RE: Filling the Vacancy on the Supreme Court of the United States

Dear Chairman Grassley and Ranking Member Leahy:

We the undersigned fifty-four (54) national, state, and local Asian Pacific American bar associations have a long history of supporting judicial nominees from both Democratic and Republican presidents. Our bipartisan organizations represent the interests of Asian Pacific American attorneys across the country.

As professional legal membership organizations and representatives of Asian Pacific American attorneys, we have consistently maintained that it is both the President and the Senate's constitutional responsibility to ensure that our courts are fully functioning.

The President has the constitutional right to nominate Article III judges—including U.S. Supreme Court Justices—"by and with the Advice and Consent of the Senate," under Article II, Section 2 of the U.S. Constitution.

Article II, Section 2 of the U.S. Constitution further makes it clear that the Senate fulfills *its* constitutional responsibility to ensure the effective functioning of our courts by giving that nominee fair consideration on the merits and a timely up or down vote.

The Constitutional obligations of the President and the Senate hold true irrespective of who is in the White House, the identity of the individual nominee, or the political affiliation of any individual Senator.

As attorneys, we are deeply concerned about the effect and impact that the current rhetoric and stated positions will have on the effective operation of the judiciary, and on public perception of the American justice system. A full complement of Supreme Court Justices is critical to ensuring the smooth functioning of the judiciary and our legal system. The mere prospect of two terms of the Court without a full bench opens the door to uncertainty in the legal system. Any actuality of an incomplete Court will hamper the administration of justice. The Court must be able to resolve questions of constitutional and statutory importance and resolve disagreements between the lower courts to ensure uniformity of federal law. It needs a full Court to be able to do so effectively. Delay in the Supreme Court's ability to fulfill its duties by intentionally leaving it incomplete will have a direct impact on the legal rights of Americans, individuals and businesses of all backgrounds, across the country, and further erode public confidence in our legal system and in the functioning of our democracy.

We strongly urge the Senate to uphold its Constitutional duty by holding a fair hearing and timely vote on any Supreme Court nominee to ensure the effective operation of our judicial system.

Sincerely,

National Organizations

National Asian Pacific American Bar Association  
National Filipino American Lawyers Association  
South Asian Bar Association of North America  
Thai American Bar Association

State and Local Bar Associations

Asian American Bar Association of the Greater Bay Area (California)  
Asian American Prosecutors Association (California)  
Asian Bar Association of Sacramento (California)  
Asian Pacific American Bar Association of Los Angeles County (California)  
Asian Pacific American Bar Association of Silicon Valley (California)  
Filipino American Lawyers of San Diego (California)  
Filipino Bar Association of Northern California  
Korean American Bar Association of the Northern California  
Orange County Asian American Bar Association (California)  
Pan Asian Lawyers of San Diego (California)  
Philippine American Bar Association (California)  
South Asian Bar Association of Northern California  
South Asian Bar Association of Southern California  
Vietnamese American Bar Association of Northern California  
Vietnamese American Bar Association of Southern California  
Asian Pacific American Bar Association of Colorado  
Connecticut Asian Pacific American Bar Association  
Asian Pacific American Bar Association – Tampa Bay (Florida)  
Asian Pacific American Bar Association of South Florida

Greater Orlando Asian American Bar Association (Florida)  
NAPABA – Hawaii  
Asian American Bar Association of Greater Chicago (Illinois)  
Chinese American Bar Association of Greater Chicago (Illinois)  
Filipino American Lawyers Association of Chicago (Illinois)  
Indian-American Bar Association of Chicago (Illinois)  
Korean American Bar Association of Chicago (Illinois)  
Asian Pacific American Bar Association of Indiana  
Louisiana Asian Pacific American Bar Association  
Asian American Lawyers Association of Massachusetts  
Asian Pacific American Bar Association – Maryland  
Michigan Asian Pacific American Bar Association  
Minnesota Asian Pacific American Bar Association  
Asian American Bar Association of Kansas City (Missouri)  
Missouri Asian American Bar Association  
Asian Pacific American Lawyers Association of New Jersey  
Asian American Bar Association of New York  
Korean American Lawyers Association of Greater New York  
Asian American Bar Association of Ohio  
Asian Pacific American Bar Association of Central Ohio  
Asian Pacific American Bar Association of Southwest Ohio  
Oregon Asian Pacific American Bar Association  
Asian Pacific American Bar Association of Pennsylvania  
Tennessee Asian Pacific American Bar Association  
Asian American Bar Association of Houston (Texas)  
Austin Asian American Bar Association (Texas)  
Dallas Asian American Bar Association (Texas)  
Asian Pacific American Bar Association of Virginia  
Asian Bar Association of Washington  
Filipino Lawyers of Washington  
South Asian Bar Association of Washington

March 14, 2016

**VIA EMAIL**

The Honorable Chuck Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
135 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

RE: Supreme Court Justice Nomination

Dear Chairman Grassley and Ranking Member Leahy:

The Colorado Indian Bar Association, Minnesota American Indian Bar Association, Native American Bar Association of D.C., Native Hawaiian Bar Association, Northwest Indian Bar Association, Oklahoma Indian Bar Association, and the South Dakota Indian Country Bar Association have a long history of supporting judicial nominees from Democratic and Republican Presidents. Our non-partisan organizations represent the interests of hundreds of lawyers, judges, and legal professionals, with a particular focus on matters affecting American Indian, Native Hawaiian, and Alaska Native communities, lands, and individuals.

The U.S. Constitution speaks plainly regarding the President and Senate's role in selecting a Supreme Court Justice. Article II, Section 2 of the Constitution unequivocally requires that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint" U.S. Supreme Court Justices. The Senate fulfills this important obligation by giving a nominee fair consideration on the merits and a timely up or down vote. These constitutional duties apply to the President and the Senate at all times.

A full complement of Supreme Court Justices is critical to ensuring the smooth functioning of the judiciary and our legal system. The Court must be able to resolve questions of constitutional and statutory importance and resolve disagreements between the lower courts to ensure uniformity of federal law. As an institution, the Court must be complete in order to operate effectively.

Delay in the Supreme Court's ability to fulfill its duties will have a direct impact on the legal rights of Americans, individuals, and businesses of all backgrounds, across the country, and will further erode public confidence in our legal system and in the functioning of our democracy.

Senators Grassley and Leahy  
March 14, 2016  
Page 2

We strongly urge the Senate to uphold its constitutional responsibility by holding a fair hearing and timely vote on any Supreme Court nominee to ensure the effective operation of our judicial system.

Sincerely,



Philip Brodeen  
President  
Minnesota American Indian Bar Association



Paul F. Nahoa Lucas  
President  
Native Hawaiian Bar Association



Seth Pearman  
President  
South Dakota Indian Country Bar Association



Joel West Williams  
President  
Native American Bar Association of D.C.



Padraic McCoy  
President  
Colorado Indian Bar Association



Lee Shannon  
President  
Northwest Indian Bar Association



Arvo Mikkanen  
President  
Oklahoma Indian Bar Association



# THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST  
WASHINGTON, D.C. 20006  
TELEPHONE (202) 293-7330  
FAX (202) 293-2352  
URL: [www.usmayors.org](http://www.usmayors.org)

**Adopted March 14, 2016**

## **Filling the Vacancy on the Supreme Court**

1. **WHEREAS**, the sudden death of Justice Antonin Scalia on February 13, 2016 created a vacancy on the Supreme Court; and
2. **WHEREAS**, Justice Scalia made immeasurable contributions to our legal system and our nation; and
3. **WHEREAS**, the U.S. Constitution states that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint...judges of the Supreme Court...;" and
4. **WHEREAS**, mayors know that it is critical that government at all levels be fully functioning and that this is especially true of the Supreme Court, which has a full docket and several major cases pending this term,
5. **NOW, THEREFORE, BE IT RESOLVED**, that The United States Conference of Mayors urges the President to nominate an individual to fill the vacancy on the Supreme Court of the United States, and the Senate to fulfill its constitutional duty to consider that nomination.



March 15, 2016

Hon. Mitch McConnell  
Majority Leader  
Russell Senate Office Building  
SR-317  
Washington, DC 20510-1702

Hon. Harry Reid  
Minority Leader  
Hart Senate Office Building  
SH-522  
Washington, DC 20510-2803

Dear Majority Leader McConnell and Minority Leader Reid:

We, the undersigned, are members of the Supreme Court Bar who practice before the Supreme Court. We work in various settings, including private law firms, state governments, and law schools, and we practice in a variety of areas, including business, civil rights, criminal law, constitutional law, energy, environmental law, and employment law. While our practices and backgrounds may differ, one thing we all have in common is the belief that a fully functioning Supreme Court is critical to the rule of law and an effective federal judiciary.

As Supreme Court practitioners, we know that it is crucial for the Supreme Court to have a full complement of nine Justices, so that it can perform its important function of establishing a uniform rule of law for the entire country. As we well know from practicing before the Court, one of the primary reasons the Supreme Court hears cases is to resolve disputes of law among the lower courts. If the Justices split 4-4 in these cases, the Court cannot resolve these conflicts because it will be unable to establish a precedential decision binding the entire country. As a result, the law will be different in different parts of the country. These splits can arise in countless areas of law, and it would undermine the rule of law for the Supreme Court to be unable to address them.

We believe it is imperative that the President expeditiously name a nominee, and that the Senate expeditiously consider and vote on that nominee. Otherwise, the Supreme Court could be without a full complement of Justices for a significant period of time, perhaps as much as the majority of two Terms if the vacancy were left open until after the presidential election and thus into 2017. If that were the case, approximately 120 cases spanning two Terms would be decided by an eight-member Court. It would be harmful to our Nation for so many cases to be heard by only eight Justices, inviting split decisions that do not resolve important legal questions and, even worse, potentially leaving unresolved conflicts among the lower courts.

Again, we practice in different settings and in different areas of the law. We have different ideologies and no doubt would have many different views on any given case. But we are united in the belief that a fully functioning Supreme Court is of vital importance to the country.

Sincerely,

Jessica Ring Amunson  
Jenner & Block LLP

Tillman J. Breckenridge  
Bailey & Glasser LLP

Mark S. Davies  
Orrick, Herrington & Sutcliffe LLP

Roy T. Englert, Jr.  
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP

Steven H. Goldblatt  
Georgetown University Law Center

Roberta A. Kaplan  
Paul, Weiss, Rifkind, Wharton & Garrison LLP

Katharine M. Mapes  
Spiegel & McDiarmid LLP

Anna-Rose Mathieson  
California Appellate Law Group LLP

Andrew J. Pincus  
Mayer Brown LLP

Noah G. Purcell  
Washington State Attorney General's Office

E. Joshua Rosenkranz  
Orrick, Herrington & Sutcliffe LLP

Thomas G. Saunders  
Wilmer Cutler Pickering Hale & Dorr LLP

Eric Schnapper  
University of Washington School of Law

Clifford M. Sloan  
Skadden, Arps, Slate, Meagher & Flom LLP

Paul M. Smith  
Jenner & Block LLP

Laurence H. Tribe  
Harvard Law School

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W.J. OTJEN, SR.  
(1880-1973)

MERL OTJEN BARNES  
(1947-1994)

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*Reply to Post Office Box*

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March 17, 2016

The Honorable Patrick J. Leahy  
Ranking Minority Member  
Senate Judiciary Committee  
437 Russell Senate Office Building  
Washington, D.C. 20510

RECEIVED MAR 31 2016

Re: A Republican Criminal Lawyer Supports the Nomination of Merrick Garland to the Supreme Court

Dear Senator Leahy:

I write to you in your capacity as the ranking Democrat and former Chairman of the Senate Judiciary Committee.

I am a partisan Republican and have been so since I was 12 years old. I support the nomination the President has made of Judge Merrick Garland to the Supreme Court. I do so because I was the principal lead attorney for Tim McVeigh, appointed by the United States District Court for the Western District of Oklahoma when Mr. McVeigh was arrested, indicted and tried for the bombing of the Alfred P. Murrah Federal Building in Oklahoma City and the use of a weapon of mass destruction (the first such prosecution under the Statute). I accepted the appointment and we defended Mr. McVeigh vigorously and, I hope, competently.

Although I was critical of some aspects of the prosecution's case and the process, I have only the highest regard for Judge Garland. At the time, he was the acting Associate Deputy Attorney General and charged with the responsibility for supervising the investigation and prosecution of the bombing case. I had many telephone conversations with him and met him when he came to Oklahoma for the preliminary hearing of Terry Nichols.

The President's description of Judge Garland in making the announcement of his nomination of his nomination is a statement with which I agree 100%. And, Judge Garland's response was typical of his modesty, restraint and self-effacement.

There is no qualified basis to reject his nomination on professional or personal grounds. He has integrity, rectitude, learning, discretion and many human qualities as a husband and father that speak well of him. He graduated with honors from the Harvard Law School, served on the Harvard Law Review, was a member of a prestigious Washington law firm, an Assistant United States Attorney, and rose to be number three in the Department of Justice. He has studied the law, taught the law, enforced the law and judged the law. He is free from rancor or active partisan partnership, though I am sure he is a Democrat. He is a moderate. He is not so young he would have a lifetime on the Supreme Court of 30 years, but that is an argument on his favor. Although he is a Circuit Judge (and Chief Judge at that), he also has active background in teaching the law, writing about it, prosecuting cases, and has been in private practice. He is well rounded personally, professionally and judicially.

I spoke of being a Republican. I served briefly as Republican State Chairman, for four years was a member of the Republican State Finance Committee, served as legal counsel to three of the four Republican Governors of this State, and served as General Counsel of the Party for six years. I also was a member of the Republican State Committee. In 1974, I was the Republican nominee in Oklahoma for Attorney General and in 1990 for the United States Senate.

This is not a partisan issue. Republicans who want to wait until the next President may find themselves with a less attractive moderate choice with keen professional instincts than the present nominee. It is said by many "better the devil you know, than the devil you don't know." I hardly consider Merrick Garland a "devil," but the political point is well taken. We have a man, who is incidentally a Democrat, but who is supremely qualified to be a member of the Supreme Court. He should be judged on that basis instead of seeking narrow political opportunism or advantage. Indeed, for reasons stated herein and other reasons, I believe Republicans in their own self-interest should support him. But, I do not urge his confirmation as a partisan matter. I urge it because I have confidence in Judge Garland.

The Oklahoma City bombing case was, until 2011, the largest mass murder in American history and the largest act of terrorism. One hundred sixty-eight people died, nineteen of whom were children under the age of six and eight of whom were with federal law enforcement agencies. Over 500 people were seriously injured and hospitalized, 200 buildings in Oklahoma City had to be leveled because of structural damage, and there was nearly a billion dollars in uninsured loss. Perhaps most telling, over 30,000 Oklahomans sought therapeutic intervention for emotional or mental stress caused by the bombing. Senator Leahy, this is a small state of about 3 million people. Almost everyone knew someone who was killed or injured in the bombing or suffered greatly from it. It is for us in Oklahoma, Senator, our Pearl Harbor. Any of us living in this state above the age of 6 or 7 remembers where he or she was when they heard of the bombing.

The Honorable Patrick J. Leahy

March 17, 2016

Page 3

Mr. Garland, as he was then, acted in the highest traditions we would expect of the Department of Justice. I urge your support of his nomination. I hope a sufficient number of Republicans go along with you.

Sincerely,

Stephen Jones

A handwritten signature in black ink, appearing to read "Stephen Jones", written in a cursive style.

SJ:kw

C:\Users\karen\Documents\Political\Leahy ltr 031716



## CITIES *for* ACTION

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Chairman, Committee on the Judiciary  
United States Senate  
135 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Harry Reid  
Minority Leader  
United States Senate  
522 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Patrick Leahy  
Ranking Member, Committee on the Judiciary  
United States Senate  
437 Russell Senate Office Building  
Washington, D.C. 20510

March 21, 2016

Dear Senators McConnell, Grassley, Reid, and Leahy:

Cities for Action is a coalition of over 100 mayors and municipalities who have joined together to lead a national movement for immigration policies and reforms that will empower stronger, safer and more economically prosperous cities and counties. **We are writing to urge you to fulfill your duty to the American people by considering and voting on President Obama's nominee to the United States Supreme Court.**

The constitutional obligations of the President and the Senate are clear and unambiguous, and should be above politics – the President appoints justices to the Supreme Court, and the Senate shall advise and consent on his nominee.

Issues that impact our jurisdictions are regularly before the Supreme Court. We have a strong interest in ensuring that the work of the Court and the welfare of our constituents are not adversely affected by an extended vacancy. Especially now, when so much is at stake – from immigration reform, to other issues of national importance – your oath to support and defend the Constitution and faithfully discharge the duties of your office becomes even more important.

When in January 2016, the Supreme Court decided to hear the case of *United States v Texas*, we had hope that the wheels of justice would finally be shifted out of neutral for millions of immigrant families. News reports indicating that members of the Senate would not consider any nominee, further echoed by the letter signed by Republican Senators on the Judiciary Committee, injects political gamesmanship into a legal system we rely on to protect our constituents.

Our coalition of cities, counties and municipal governments represents over 55 million people from more than half the states in the nation. Our immigrant populations are part of the economic and cultural fabric of our communities, yet the justice they seek has been put on hold. Adding any delay in considering a new nominee will further deny a resolution for the future of their families.

The Senate has a responsibility to act, both under the oath they have sworn and to the people for whom they have pledged to work. Your willingness to meet this responsibility is not just a test of your commitment to fulfill the duties of your job, but your fidelity to the democratic values that are at the heart of our nation and our country's history.

Thus we respectfully request that you embrace the role of leadership that the people of this country have entrusted in you, and promptly consider the President's nominee to the Court without obstruction or undue delay.

Thank you for your time and consideration in this matter,

Ed Pawlowski, Mayor of Allentown, PA  
Steve Adler, Mayor of Austin, TX  
Stephanie Rawlings-Blake, Mayor of Baltimore, MD  
William Bell, Mayor of Birmingham, AL  
Edward Terry, Mayor of Clarkston, GA  
Stephen Benjamin, Mayor of Columbia, SC  
Frank Cownie, Mayor of Des Moines, IA  
Dianne Martinez, Mayor of Emeryville, CA  
Sly James, Mayor of Kansas City, MO  
Eric Garcetti, Mayor of Los Angeles, CA  
Paul Soglin, Mayor of Madison, WI  
Toni Harp, Mayor of New Haven, CT  
Bill de Blasio, Mayor of New York, NY  
Jim Kenney, Mayor of Philadelphia, PA  
Greg Stanton, Mayor of Phoenix, AZ  
William Peduto, Mayor of Pittsburgh, PA  
John Dickert, Mayor of Racine, WI  
Thomas Butt, Mayor of Richmond, CA  
Kevin Johnson, Mayor of Sacramento, CA  
Jackie Biskupski, Mayor of Salt Lake City, UT  
Edwin Lee, Mayor of San Francisco, CA  
Edward Murray, Mayor of Seattle, WA  
Stephanie Miner, Mayor of Syracuse, NY  
Andrew Gillum, Mayor of Tallahassee, FL

March 31, 2016

The Honorable Dan Coats  
493 Russell Office Building  
Washington, D.C. 20510

Dear Senator Coats:

We the undersigned are law professors in Indiana. We urge you to give fair consideration to the nomination of Chief Judge Merrick B. Garland to the Supreme Court of the United States, and encourage Senate leadership to hold a confirmation hearing and schedule a timely up-or-down vote on his nomination.

Chief Judge Garland's fitness to serve on the Supreme Court is unquestioned. He has more federal judicial experience than any Supreme Court nominee in history, having served the past 19 years on the United States Court of Appeals for the District of Columbia Circuit. In that time, he has demonstrated a proven judicial temperament, enormous intelligence, and an unwavering commitment to impartiality, fairness, and the rule of law. It is therefore no surprise that he enjoys support from across the political spectrum, including from conservative legal luminaries like Miguel Estrada, Alberto Gonzales, and Kenneth Starr. Indeed, Judge Garland's judicial record has validated the votes cast by you and a majority of Senate Republicans (including then-Indiana Senator Richard Lugar) to confirm him to the D.C. Circuit in 1997.

Of course, it is entirely appropriate for every senator to thoroughly review Judge Garland's record and qualifications. But an outright refusal to even consider his nomination runs counter to the Senate's obligation, under Article II of the Constitution, to provide "advice and consent." There is no exception that allows senators to withhold advice and consent during a presidential election year, nor is there an insufficient amount of time remaining to complete the confirmation process. Over the past two decades, the longest confirmation process for a Supreme Court nominee lasted 99 days, and President Obama has nearly 300 days remaining in his term.

Chief Judge Garland is an eminently qualified nominee who deserves fair consideration of his nomination. Refusing to do so is an abdication of the Senate's constitutional duty to provide advice and consent. We hope that you will meet with Chief Judge Garland and urge your Senate colleagues to hold a prompt hearing and timely confirmation vote.

Sincerely  
*The Undersigned*

Cc: Senator Donnelly

**Cynthia M. Adams**, Clinical Professor of Law, Indiana University McKinney School of Law

**Jeannine Bell**, Richard S. Melvin Professor of Law, Indiana University Maurer School of Law

**Kerry Hyatt Bennett**, Adjunct Professor of Law, Indiana University McKinney School of Law



**Kevin D. Brown**, Richard S. Melvin Professor of Law, Indiana University Maurer School of Law

**Derrick Augustus Carter**, Associate Professor of Law, Valparaiso University Law School

**Daniel H. Cole**, Professor of Law and of Public and Environmental Affairs, Indiana University Maurer School of Law

**David Cook**, Adjunct Professor of Law, Indiana University McKinney School of Law

**Jeffrey O. Cooper**, Associate Professor of Law, Indiana University McKinney School of Law

**Eric R. Dannenmaier**, Professor of Law, Indiana University McKinney School of Law

**Robert E. Downey**, Lecturer in Law, Indiana University Maurer School of Law

**Jennifer A. Drobac**, R. Bruce Townsend Professor of Law, Indiana University McKinney School of Law

**Fernand N. Dutile**, Professor of Law Emeritus, University of Notre Dame Law School

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**Judith Fox**, Clinical Professor of Law, University of Notre Dame Law School

**Charles Gardner Geyh**, John F. Kimberling Professor of Law, Indiana University Maurer School of Law

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**William D. Henderson**, Professor of Law and Val Nolan Faculty Fellow, Indiana University Maurer School of Law

**Max Huffman**, Professor of Law, Indiana University Robert H. McKinney School of Law

**Richard E. Humphrey**, Reference and Instruction Librarian, Ruth Lilly Law Library, Indiana University McKinney School of Law

**Dawn Johnsen**, Walter W. Foskett Professor of Law, Indiana University Maurer School of Law

**Eleanor D. Kinney**, Hall Render Professor of Law Emerita, Indiana University McKinney School of Law

**Andrea D. Lyon**, Dean and Professor of Law, Valparaiso University Law School

**Norman Lefstein**, Professor of Law and Dean Emeritus, Indiana University McKinney School of Law

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**Jennifer Mason McAward**, Associate Professor of Law, Notre Dame Law School

**Michael A. Mullett**, Adjunct Professor of Law, Indiana University McKinney School of Law

**Xuan-Thao Nguyen**, Gerald L. Bepko Chair in Law, Director, Center for Intellectual Property & Innovation, Indiana University McKinney School of Law

**Robert J. Palmer**, Adjunct Professor of Law, University of Notre Dame Law School

**Florence Wagman Roisman**, William F. Harvey Professor of Law and Chancellor's Professor, Indiana University McKinney School of Law

**Jeffrey Evans Stake**, Robert A. Lucas Chair of Law, Indiana University Maurer School of Law

**Susan Stuart**, Associate Dean of Academic Affairs, Valparaiso University Law School

**J. Alexander Tanford**, Professor Emeritus of Law, Indiana University Maurer School of Law

**D.A. Jeremy Telman**, Professor of Law, Valparaiso University Law School

**Inge Van der Cruysse**, Lecturer in Law, Indiana University Maurer School of Law

**Deborah Widiss**, Professor of Law, Indiana University Maurer School of Law

**Diana R. H. Winters**, Associate Professor of Law and Dean's Fellow, Indiana University McKinney School of Law

**Del Wright**, Associate Professor of Law, Valparaiso University Law School

**Meaghan M. Zore**, Adjunct Professor of Law, Indiana University McKinney School of Law

Please note: Organizational affiliation for all signatories is included for identification purposes only; individuals represent only themselves, not the institutions where they are teaching or other organizations in which they are active.



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Dear Majority Leader Mitch McConnell, Minority Leader Harry Reid, Judiciary Committee Chairman Chuck Grassley, and Judiciary Committee Ranking Member Patrick Leahy:

We write as bar leaders who have taken an oath to defend the Constitution. We call on the Senate to fulfill its constitutional duty to duly and promptly consider President Obama's nomination, so that our highest Court may continue to perform its critical function at the apex of our third branch of government.

Article II of the Constitution requires the President, "with the advice and consent of the Senate," to appoint judges to the Supreme Court. Through this section, the framers placed in the hands of the executive and legislative branches of our government a duty to ensure that the third pillar of our democracy, our courts, would be protected from entanglement in partisan politics. We trust that you will fulfill this duty, and, in the words of Justice Sandra Day O'Connor, "pick the best person you can under these circumstances, as the appointing authority must do."

While careful evaluation and reasoned debate regarding the qualifications of the nominee are central to the Senate's role to advise and consent, it would undermine the rule of law and risk nullifying the Supreme Court's power to serve its constitutional role as arbiter of disputes, were the confirmation process to be delayed until a new president is inaugurated. Were such a path to be followed, the Court would be forced to sit for two terms, and over a year, with a vacancy. The implications of this course of action would be significant, subjecting people in different regions of the country to different legal standards on matters of constitutional importance and leaving open the specter of an unresolved constitutional crisis. The rule of law requires an ultimate arbiter. The Constitution has placed the Supreme Court in that role.

As Justice O'Connor has said, the position of Supreme Court justice is "an important position and one we care about as a nation, as a people." We ask that you carry out your constitutionally prescribed roles with full fealty to the oaths you have taken so that our Supreme Court is returned to its full membership.

Sincerely,

*The Board of Directors of Oregon Women Lawyers*

cc: United States Senators - Oregon  
President Barack Obama

March 31, 2016

VIA ELECTRONIC MAIL

The Honorable Charles Grassley  
Chairman, Committee on the Judiciary  
United States Senate  
Dirksen Senate Office Building  
Room 224  
Washington, DC 20510-6275

The Honorable Patrick Leahy  
Ranking Member, Committee on the Judiciary  
United States Senate  
Dirksen Senate Office Building  
Room 152  
Washington, DC 20510-6275

RE: Merrick Garland's Nomination and the Senate's Advice-and-Consent Duty

Dear Senators Grassley and Leahy:

We, the undersigned professors with expertise in the Second Amendment, write to express our concern with recent statements suggesting that the Judiciary Committee will hold neither hearings nor a vote on Chief Judge Merrick Garland's nomination to the Supreme Court, and to urge the Committee to fulfill its constitutional duty by doing so.

Senate Majority Leader Mitch McConnell and others have justified taking no action on Judge Garland's nomination based on serious misrepresentations of the Senate's constitutional obligations and a substantial distortion of Garland's record.

Senator McConnell recently stated that he "can't imagine that a Republican majority in the United States Senate would want to confirm, in a lame duck session, a nominee opposed by the National Rifle Association." For the United States Senate to outsource its constitutional advice-and-consent duty to any special interest group would set a dangerous precedent for future judicial nominations, and would pose a severe threat to our impartial judiciary. We are particularly troubled, in this case, because the N.R.A.'s stated reasons for opposing Judge Garland are based on an extraordinary misrepresentation of his record.

Of course, the N.R.A., like any other organization, can and should express its views on Supreme Court nominees, and Senators should give whatever consideration they deem appropriate to such advocates' arguments as they decide whether to confirm or oppose a nominee. The Senate, however, should give Judge Garland the opportunity to explain, for himself, his views—by holding hearings on his nomination, as is the ordinary and traditional practice in the case of Supreme Court nominations.

The N.R.A. claims that Judge Garland is hostile to gun rights and the Second Amendment, but there is nothing in his record that supports such an attack. Garland's opponents base their specious claims on his actions in two cases that came before the D.C. Circuit during his tenure, but in neither case did Judge Garland take a substantive position on the Second Amendment, the individual right to keep and bear arms, or the Supreme Court's landmark decision in *District of Columbia v. Heller*.

In *Parker v. District of Columbia*, a case challenging the D.C. handgun ban the Supreme Court ultimately found to violate the Second Amendment in *Heller*, Judge Garland was one of four judges—including conservative, George H.W. Bush-appointee, A. Raymond Randolph—who voted for the entire D.C. Circuit to rehear, *en banc*, a three-judge panel’s ruling that the ban violated the Second Amendment. Under the Federal Rules of Appellate Procedure, *en banc* review is called for when a panel decision conflicts with prior judicial precedent and when the case involves a “question of exceptional importance.” *Parker* fit both criteria.

It is well established that such procedural votes say nothing about a judge’s views on the substance of the case, or how he or she would have voted on the merits. Yet, Judge Garland’s critics assert that his vote for *en banc* review “proves” his hostility to the Second Amendment. Any argument that a purely procedural vote reflecting no substantive judgment on the merits of the underlying case is proof that Judge Garland would vote to overturn *Heller* is specious and dishonest, and unworthy of acceptance by the Committee or the Senate as a whole.

Similarly, Judge Garland’s vote in *National Rifle Association v. Reno* is misleadingly characterized as further evidence of an anti-gun position and a desire to create a national gun registry. In that case, Judge Garland joined an opinion holding that the Department of Justice acted lawfully—and did not establish any gun registry—by temporarily retaining records on background checks performed pursuant to the Brady Act. The information the Department temporarily retained—which did not include “addresses of persons approved to buy firearms, nor any information on specific weapons, nor even whether approved gun purchasers actually completed a transaction”—enabled audits designed to ensure an accurate, secure, and private background check system. The information was destroyed within six months, in keeping with the Brady Act. When the N.R.A. appealed, the Bush Department of Justice, under John Ashcroft, defended the opinion Judge Garland joined, writing that “[t]he court of appeals’ decision is correct.”

The Supreme Court agreed, and declined to hear the N.R.A.’s appeal. But Judge Garland’s critics have again distorted the record, portraying his vote in *Reno* as anti-gun and claiming it upheld, in the words of N.R.A. executive Chris Cox, “a federal registry of law-abiding gun owners.”

The First Amendment may grant interest groups like the N.R.A. the right to distort the facts and attempt to mislead the public. Nothing in the Constitution justifies the Senate acceding to such misrepresentations.

As with other issues of national importance, we believe that the health and vitality of our democratic republic benefits when people express their diverse opinions on a Supreme Court nominee’s qualifications, record, and views. It weakens our system of government, however, for the Senate to effectively grant a special interest lobbying organization veto power over a nominee—especially when its opposition is based on an unfair and fundamentally flawed assessment of the nominee’s record.

To prevent such an abdication of responsibility, we urge the Judiciary Committee to fulfill its role by leading the Senate in a sober, objective and fair assessment of Judge Garland’s record, experience,

and qualifications by holding hearings on his nomination. This would provide critics and supporters alike the opportunity to hear from the nominee himself, in a process that, in the past, has been available to scores of past Supreme Court nominees as part of the ordinary course of the nomination process.

Failure to grant a hearing and a vote would not only do a disservice to Judge Garland, it would risk incalculable damage to the Senate, the Supreme Court, and our democracy.

Signed,

Erwin Chemerinsky

Founding Dean and Distinguished Professor of Law and Raymond Pryke Professor of First Amendment Law, University of California, Irvine School of Law

Jamal Greene

Professor of Law, Columbia Law School

Ariela Gross

John B. and Alice R. Sharp Professor of Law and History, USC Gould School of Law

Mark R. Killenbeck

Wylie H. Davis Distinguished Professor, University of Arkansas

Sanford Levinson

W. St. John Garwood and W. St. John Garwood Centennial Chair of Law, University of Texas Law School; Professor of Government, University of Texas at Austin

Gregory Magarian

Professor of Law, Washington University School of Law

Allen Rostron

Associate Dean for Students and the William R. Jacques Constitutional Law Scholar and Professor of Law, University of Missouri-Kansas City School of Law

Lawrence E. Rosenthal

Professor of Law, Chapman University, Dale E. Fowler School of Law

Sonja R. West

Associate Professor of Law, University of Georgia School of Law

Adam Winkler

Professor of Law, UCLA School of Law

*University affiliation provided for identification purposes only.*

cc: Members of the Senate Judiciary Committee

April 4, 2016

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Harry Reid  
Minority Leader  
United States Senate  
522 Hart Senate Office Building  
Washington, DC 20510

The Honorable Chuck Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
135 Hart Senate Office Building  
Washington, DC 20510

The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
437 Russell Senate Office Building  
Washington, DC 20510

Dear Majority Leader McConnell, Minority Leader Reid, Chairman Grassley, and Ranking Member Leahy:

We had the privilege and pleasure of serving as law clerks to Chief Judge Merrick B. Garland of the United States Court of Appeals for the District of Columbia Circuit. Although our lives and careers have taken us in many different directions—from private law firms to corporate counsel positions, from prosecutors’ offices to indigent defense providers—we are united in our deep admiration of Chief Judge Garland and our support for his swift confirmation to the United States Supreme Court.

In nominating him, President Obama described Chief Judge Garland’s “decency, modesty, integrity, even-handedness, and excellence.” As his former law clerks—the people who worked most closely with him for the past eighteen years—we witnessed those qualities in chambers every day.

Throughout his career, Chief Judge Garland has demonstrated an unwavering commitment to the Constitution and the rule of law. As a prosecutor, that meant serving as an advocate for justice and for victims of terrible crimes, while also respecting the rights of criminal

defendants. As a judge, it has meant relentlessly seeking the right answer to legal questions. In neither role did he ever seek, or settle for, a politically expedient solution or a result that conformed to any predetermined political view. On more than one occasion, he reminded us that the role of judges is to apply the law to the facts before them. For Chief Judge Garland, that statement has never been a sound bite; it is a credo that has guided him across eighteen years on the federal bench.

Chief Judge Garland's years on the bench have also been characterized by an unrelenting work ethic. He treated every matter before him with the same care and attention to detail, whether it affected the national interest or a single ordinary life. By the time of oral argument, Chief Judge Garland had mastered the relevant case law. He typically knew the record better than the clerk who was assigned to help him on the case, and often times better than the advocates themselves. When it came time for him to draft an opinion, he labored over every word, making sure that the finished product was just, faithful to the law, and clearly written—always thinking of the courts and litigants who would rely on it in the future.

Chief Judge Garland also taught us the value of diversity, in all its forms. We observed how Chief Judge Garland forged meaningful connections with others from a wide array of backgrounds and ideological perspectives—from the law clerks he hires to the personal and professional relationships he maintains. He finds camaraderie with his fellow judges without regard to who nominated them to the bench. Chief Judge Garland deeply believes that our system of justice works best when those who see things differently are able to work together, in a collegial manner, to arrive at a just result. And when he must disagree with his colleagues, he always does so respectfully.

There are not many bosses who so uniformly inspire the loyalty that we all feel toward Chief Judge Garland. Our enthusiasm is both a testament to his character and a reflection of his commitment to mentoring and encouraging us long after we left his chambers. He has stood by our side during the happiest moments of our lives—quite literally, having officiated the weddings of seven of his former clerks. He has welcomed us and our growing families into his home. He is a constant source of career advice and guidance. And he has offered love and support in the dark times, too, when we have suffered setbacks, losses, and uncertainty.

We, in turn, have always looked to Chief Judge Garland as a role model. He instilled in all of us an abiding appreciation for the importance of public service and volunteerism. It was not lost on us that, as a younger lawyer, he gave up a lucrative law firm partnership to serve as a line prosecutor. We saw firsthand how, no matter how busy his docket was, he took the time to tutor elementary students in Northeast Washington. And we listened as he urged us to seek out concrete ways of giving back to our own communities throughout our careers. Following Chief Judge Garland's lead, in the years since our clerkships we have collectively gone on to work in a wide variety of public service positions, offered legal services *pro bono* to those in need, and devoted our careers to educating the next generation of lawyers.

Chief Judge Garland led by example in other important ways as well. More than anything else, Chief Judge Garland sees himself as a husband and a father. His great love and partnership with his wife, Lynn, and his dedication to and pride in his two daughters, Becky and



Jessie, know no bounds. We noticed how, despite the heavy burdens of his professional obligations, Chief Judge Garland always made time for his family, whether it involved summer vacations to America's national parks, reading the Harry Potter series to his daughters in its entirety, or personally scouring the neighborhood when a beloved pet rabbit escaped its hutch.

Having worked by his side, we also know how much Chief Judge Garland loves his country. Those of us who clerked for him at the time will always remember the morning of September 11, 2001. From his chambers, we watched with horror the news about the attacks on the World Trade Center and the Pentagon. In the days after, we remember the explicit importance Chief Judge Garland placed on coming to the office every day and continuing to prepare for upcoming cases. In the aftermath of that terrible tragedy, he believed it was more important than ever for the American people to see that their system of government was functioning without interruption—that the rule of law endured.

Never one to put personal advantage over public duty, Chief Judge Garland has exemplified throughout his career a commitment to the highest ideals of our system of justice. We have every confidence that, when confirmed, Chief Judge Garland will serve his country ably and honorably as an Associate Justice of the United States Supreme Court.

Respectfully Submitted,

Priya Aiyar, 2001-02

Jessica Ring Amunson, 2005-06

Samantha Bateman, 2011-12

Jeffrey Bellin, 1999-2000

Eric Berger, 2003-04

Ishan Bhabha, 2009-10

Sophia M. Brill, 2011-12

Jessica Bulman-Pozen, 2007-08

Martine Cicconi, 2010-11

David M. Cooper, 2004-05

Justin Driver, 2005-06

Karen Dunn, 2006-07

Kristen Eichensehr, 2008-09

Benjamin Eidelson, 2014-15

Heather Elliott, 2000-01

Nora Freeman Engstrom, 2003-04

Sam Erman, 2009-10

Matthew X. Etchemendy, 2012-13

Tali Farhadian Weinstein, 2003-04

Brian Fletcher, 2006-07

Chad Golder, 2005-06

Danielle C. Gray, 2003-04

Craig Green, 2000-01

Alex L. Groden, 2014-15

David Gunter, 2001-02

Kathleen R. Hartnett, 2000-01

Kate Heinzelman, 2009-10

Rachel Heron, 2012-13

Serena Hoy, 2000-01

Clare Huntington, 1997-98

Ben Keith, 2002-03

Joshua A. Klein, 2002-03

Jonathan Kravis, 2004-05

Albert Lin, 1997-98

Janine M. Lopez, 2014-15

Daniel E. Matro, 2010-11

Robin M. Meriweather, 1998-99

Anton Metlitsky, 2006-07

Jay Michaelson, 1998-99

Michael J. Mongan, 2006-07

Erin Murphy, 1999-2000

Lindsey Powell, 2007-08

David Pozen, 2008-09

Elizabeth B. Prelogar, 2008-09

J.J. Prescott, 2002-03

Michael J. Pyle, 2005-06

Mitchell Pearsall Reich, 2012-13

Christopher S. Rhee, 1998-99

Charles W. Scarborough, 1997-98

Zachary C. Schauf, 2011-12

Paul Schlaud, 1999-2000

Thomas P. Schmidt, 2011-12

Miriam Seifter, 2007-08

Joshua M. Segal, 2004-05

Colleen E. Roh Sinzdak, 2010-11

Sonja Starr, 2002-03

Benjamin Taibleson, 2010-11

Elisabeth S. Theodore, 2009-10

Benjamin H. Torrance, 2001-02

Kendall Turner, 2013-14

Meaghan VerGow, 2004-05

Dana R. Wagner, 1999-2000

Joshua Waldman, 1998-99

Alexandra M. Walsh, 2001-02

Previn Warren, 2012-13

Elizabeth Wilkins, 2013-14

Damian Williams, 2007-08

David M. Zions, 2008-09

President  
**Marsha L. Anastasia**  
Stamford, CT

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Chicago, IL

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**Angela Beranek Brandt**  
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San Bernardino, CA

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Rogers, AR

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**Deborah S. Froling**  
Washington, DC

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Chicago, IL

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Northbrook, IL

**Elizabeth A. Levy**  
Cambridge, MA

**Suzan A. Miller**  
Santa Clara, CA

**Leslie D. Minier**  
Chicago, IL

**Suzette Recinos**  
Stamford, CT

**Carol A. Robles-Román**  
New York, NY

Executive Director  
**Jenny Waters**  
Chicago, IL

April 13, 2016

RECEIVED APR 19 2016

Via Federal Express

The Honorable Chuck Grassley  
Chair  
Committee on the Judiciary  
United States Senate  
135 Hart Senate Office Building  
Washington, DC 20510

The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
433 Russell Senate Office Building  
Washington, DC 20510

**Re: Nomination of Judge Merrick Garland for Associate Justice of the  
United States Supreme Court**

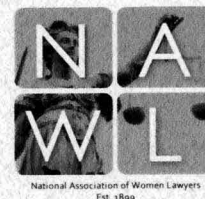
Dear Chairman Grassley, Ranking Member Leahy, and Members of the Senate Judiciary Committee:

The National Association of Women Lawyers ("NAWL") Supreme Court Committee has completed an extensive evaluation of the qualifications and background of the Honorable Merrick Garland, President Obama's nominee to fill the vacancy on the Supreme Court. Based on its review of over 330 opinions and dissents authored by Judge Garland and articles authored or coauthored by him, its interviews of dozens of individuals, and its consideration of the information publicly available as of the date of this letter, NAWL's Supreme Court Committee concluded that Judge Garland is "well-qualified" for the position of Associate Justice. "Well-qualified" is the highest rating that the Committee is authorized to confer upon a nominee.

On March 16, 2016, President Obama announced his nomination of Judge Garland. The NAWL Supreme Court Committee, which includes a distinguished array of law professors, appellate practitioners, corporate counsel, and non-profit lawyers, convened immediately to do the work of reviewing Judge Garland's credentials. (A listing of the NAWL Committee members and their affiliations is included for your information.) Specifically, the Committee reviewed all of Judge Garland's publicly available writings and decisions and conducted in-depth personal interviews with key individuals who have information regarding Judge Garland, his various professional roles, and his treatment of litigants, attorneys, employees, and colleagues, particularly those who are women.

Although the Committee emphasized a review of cases that might be of particular importance to women, the members of the Committee did not limit their review, focusing on a wide range of criminal and civil issues. The Committee concluded that Judge Garland consistently displayed both a superior intellect and a comprehensive understanding of the issues with which he was presented. The Committee found his opinions well written, his ability to analyze statutory and case law excellent, and his judicial reasoning sound and unbiased.

The Committee's interviews persuaded it that Judge Garland is an excellent judge, a brilliant legal mind, thoughtful, extremely hard working, highly prepared, thorough, open-minded, fair, and committed to reaching the correct result as dictated by the applicable law. He was described as a consensus builder with a high degree of integrity. Interviewees noted his high level of respect and regard for women, his commitment to equality and equal opportunity in his workplaces, and his commitment to making

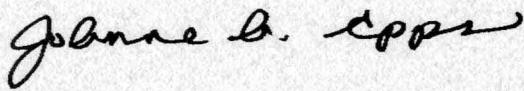




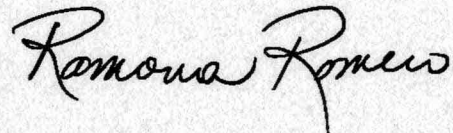
decisions without regard to the gender of the litigants. Interviewees also affirmed the importance Judge Garland placed on treating litigants and counsel before him, including women, with the utmost respect and professionalism. The Committee was impressed by Judge Garland's commitment to hiring and mentoring female law clerks, which carries increased importance given that his clerks have a high rate of success in their applications for US Supreme Court clerkships.

Based on its review of the written record and information derived from interviewees, the NAWL Supreme Court Committee is confident that Judge Garland has demonstrated the intellectual and analytic talent, judicial temperament, commitment to the rule of law, and professional demeanor required to serve on our Nation's highest court.

Very Truly Yours,



JoAnne Epps, Co-Chair  
NAWL Supreme Court Committee



Ramona E. Romero, Co-Chair  
NAWL Supreme Court Committee

cc: The White House  
Judge Merrick Garland



## Supreme Court Committee Members

Name/Title	Affiliation
<b>Co-Chair</b> JoAnne Epps, Dean	Temple University Beasley School of Law
<b>Co-Chair</b> Ramona Romero, General Counsel	Princeton University
<b>Readers Subcommittee Chair</b> Margaret Drew, Associate Professor, Director of Clinics and Experiential Learning	University of Massachusetts School of Law
<b>Coordination Subcommittee Chair</b> Wendy Wen Yun Chang, Partner	Hinshaw & Culbertson
Dolores Atencio, Visiting Scholar	University of Denver
Janet Bivens, Former Corporate Counsel	DuPont
Meryl Chertoff, Executive Director	The Aspen Institute
Sharla Frost, Partner	Tucker Ellis
Romie Griesmer, Supervising Attorney/Lecturer at Law	Widener University Delaware Law School
Lisa Horowitz, Founder and Principal Advisor	Attorney Talent Strategy Group
Roberta Leibenberg, Senior Partner	Fine Kaplan and Black R.P.C.
Deborah Malamud, AnBryce Professor of Law	New York University School of Law
Judith Miller, Former Director, Senior Vice President, and General Counsel	Bechtel Group, Inc.
Paulette Morgan Mara, Partner	Schoeman Updike & Kaufman
Suzette Recinos, General Counsel	Daymon Worldwide
Collin Udell, Of Counsel	Jackson Lewis
Marisa Van Saanen, Associate	Skadden, Arps, Slate, Meagher, & Flom

April 19, 2016

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Harry Reid  
Minority Leader  
United States Senate  
Washington, DC 20510

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Majority Leader McConnell, Minority Leader Reid, Chairman Grassley, and Ranking Member Leahy:

As former prosecutors, law enforcement agents and victim advocates who worked as a team with Merrick Garland, as well as state and local authorities, to secure justice for the thousands of victims of the Oklahoma City bombing, we write to offer our enthusiastic support for Chief Judge Garland to serve on the Supreme Court of the United States.

We are a diverse group: we live in different parts of the country and work in a variety of fields, we have no common political affiliation, and indeed some of us are occasionally adversaries in court. But despite those differences we are united today, as we were united two decades ago, in our respect and admiration for the integrity, brilliance, leadership, and judgment of Merrick Garland. Twenty years ago, the nation could not find a better lawyer to manage the investigation and prosecution of what was then the worst crime ever committed on American soil. Today, our nation could not find a better judge, nor a more honorable man, to join its highest court.

On April 19, 1995, while first responders were still searching for the injured and the dead in the ruins of the Alfred J. Murrah Federal Building, Merrick Garland worked with the folks on the ground to provide the best federal resources, personnel and counsel to assist with the investigation and prosecutions. He knew that the best thing he could do was to leave Washington and travel to Oklahoma City to ensure that the investigators, the prosecutors, the victims and the survivors had the full support of the Justice Department. He arrived to find the largest and most complex crime scene anyone in American law enforcement had ever encountered. He helped to ensure that the many different local, state, and federal law enforcement agencies worked together as a team, despite their



sometimes differing ideas about how best to build a case. At the same time, he made sure the victims, the survivors and their families had the critical resources they needed to deal with the unspeakable losses they had suffered.

Once the two men responsible for the bombing had been identified and arrested, Judge Garland was careful to ensure that each was treated fairly and with dignity to ensure that no one could reasonably accuse the government of a rush to judgment. He meticulously oversaw every step of the prosecution's initial proceedings, building an overwhelming case and ensuring that no legal error would allow the bombers to escape responsibility for their atrocity. And with the victims' families and the nation desperate for information and justice, Judge Garland ensured that they would have both.

After the case was on a sound footing, Judge Garland returned to his critical responsibilities at the Justice Department, but maintained close contact with the rest of us who continued to work on the case. With his towering intellect, exceptionally sound judgment, and extraordinary decency, he provided the leadership and wise counsel that helped us face both novel legal issues in the courtroom and unprecedented challenges in supporting a community of victims that numbered in the thousands.

On a personal level, we all benefitted from having Judge Garland in our corner. For some of us, the bombing had ripped through our home town and killed and wounded neighbors and colleagues; for the rest of us who came to the task force from across the country, the case required many months away from friends and family. For all of us, working to secure justice for the victims and to reassure the nation that our judicial system could respond fairly but forcefully to such an act of domestic terrorism, the pressure to get it right was unyielding – and Judge Garland's support was critical. He was not just a supervisor; he was a mentor, a counselor, and a friend.

From the day of the Oklahoma City bombing until his judicial appointment at the start of the first of the trials, Merrick Garland provided our team with leadership, confidence, determination, and hope. If confirmed, he will bring to the Supreme Court the same humanity, talent, and judgment that we have seen in him for two decades. We unconditionally support his nomination and urge you to support his confirmation as an Associate Justice of the Supreme Court.

Very truly yours,

Donna Bucella

Joseph Hartzler

James Orenstein

Vicki Zemp Behenna

Carolyn Hightower

Patrick Ryan

Sean Connelly

Arlene Johnson

Beth Wilkinson

David Chipman

Wan Kim

Aitan Goelman

Larry Mackey

Jamie Gorelick

Scott Mendeloff

April 20, 2016

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Harry Reid  
Minority Leader  
United States Senate  
522 Hart Senate Office Building  
Washington, DC 20510

The Honorable Chuck Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
135 Hart Senate Office Building  
Washington, DC 20510

The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
437 Russell Senate Office Building  
Washington, DC 20510

**Re: Nomination of Judge Merrick Garland**

Dear Majority Leader McConnell, Minority Leader Reid, Chairman Grassley, and Ranking Member Leahy:

We write to urge the Senate to give the President's nomination of Judge Merrick Garland for the vacant seat on the United States Supreme Court the hearing and due consideration that Judge Garland so clearly deserves.

Judge Garland is widely recognized as one of the finest and most respected judges on the federal bench today. Early in his career, Judge Garland – like Chief Justice John Roberts – served as a law clerk to the former Chief Judge of the U.S. Court of Appeals for the Second Circuit, Henry Friendly. Each of the undersigned attorneys and law professors likewise clerked for Judge Friendly at the outset of our careers. (The many judges among Judge Friendly's former clerks are unable to consider signing this letter because it arguably is not permitted by the Code of Conduct for U.S. Judges.) Many of us know Judge Garland personally, and know first-hand his outstanding qualifications for appointment to the Supreme Court.

All of us know well the model that Judge Friendly set for us, which Judge Garland has successfully emulated.

Judge Friendly is generally regarded as one of the great appellate judges of the Twentieth Century. He was a brilliant man, with an encyclopedic knowledge of the law and an extraordinary vision of how different components of the law fit together to form a seamless whole. While Judge Friendly was a Republican appointed to the bench by President Eisenhower, he brought no political agenda to his judicial decisions, and evaluated each case solely on its legal merits. His legal analysis was rigorous, and he explored legal issues in great depth, yet he had a remarkable ability to explain his decisions by reference to first principles and common sense. He was committed to excellence in his judicial opinions and demanded nothing but the best from himself and his law clerks.

Judge Garland is a judge cut out of the same mold. In his nearly twenty years on the D.C. Circuit bench, he has demonstrated that he shares many of these same qualities. He is a brilliant lawyer, and is universally respected for his legal craftsmanship and the quality of his legal opinions. Like Judge Friendly, he insists on excellence in everything that he does. He is a judge's judge: he has no political or ideological agenda; he is unbiased, and approaches each case on its legal merits. He is exceptionally fair-minded and open to argument, and gives careful consideration to all the legal arguments presented to him before making a decision. He has a superb judicial temperament, and is unfailingly polite, fair and even-tempered.

There is simply no one in the country who is more qualified than Judge Garland to sit on the Supreme Court. We urge you to give his nomination fair consideration, and are confident that, if you do so, you will see that he should be confirmed.

Respectfully submitted,

Bruce Ackerman  
Robert M. Berger  
Donald P. Board  
Philip Bobbitt

Henry S. Bryans  
Mary I. Coombs  
Thomas Curtis  
Thomas G. Dagger  
Frederick T. Davis  
Richard Daynard  
Peter Edelman  
Ira M. Feinberg  
A. Richard Feldman  
Richard B. Glickman  
Walter Hellerstein  
Reinier Kraakman  
Larry Kramer  
William Lake  
Michael R. Lazerwitz  
Raymond B. Ludwiszewski  
Jonathan Macey  
Theodore N. Mirvis  
Paul Mogin  
William F. Pedersen  
Lawrence B. Pedowitz  
Todd Rakoff  
David J. Seipp  
Warren R. Stern  
Stuart C. Stock  
Ruth Wedgwood  
Marc Wolinsky

April 21, 2016

Re: *Senate Consideration of Supreme Court Nominee*

Dear Senator:

On behalf of the undersigned organizations committed to advancing women's legal rights and protections, we write to urge you to consider the nomination of Judge Merrick Garland to be an Associate Justice of the United States Supreme Court.

The Supreme Court's decisions give meaning to legal rights for women, including women's constitutional right to equality under the law and to make the most personal and private decisions, such as whether to have an abortion or to use contraception. The Court's decisions likewise are key in determining the scope and interpretation of statutes prohibiting sex discrimination at work and at school, and laws establishing civil rights, voting rights, and health and safety regulations. The Court's decisions in these and many other areas of the law, such as affirmative action and immigration, affect the lives of women and girls across the country for generations. That is why women, and all those who rely on the courts for justice, need the Court to be functioning at full force.

Article II, Section 2 of the Constitution provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court." The Constitution does not create exceptions for presidential election years. In fact, since 1900, the Senate has voted on eight nominations to the Supreme Court during election years, including, most recently, the nomination of Associate Justice Anthony Kennedy. The nomination of any Supreme Court Justice is too important to be subject to political gamesmanship.

We urge you to ensure that the Senate Judiciary Committee holds fair and expeditious hearings and a vote on the nomination of Judge Garland. We also urge you to press for a timely vote before the full Senate.

Please do not hesitate to contact Amy Matsui at the National Women's Law Center, at [amatsui@nwlc.org](mailto:amatsui@nwlc.org), should you have any questions or wish to discuss this issue further.

Sincerely,

9to5, National Association of Working Women  
Advocates for Youth  
Alliance for a Just Society  
American Association of University Women (AAUW)  
American Sexual Health Association  
Association of Asian Pacific Community Health Organizations (AAPCHO)  
Atlanta Women for Equality  
Center for Reproductive Rights  
Coalition of Labor Union Women  
Institute for Science and Human Values

Legal Momentum  
Legal Voice  
Mabel Wadsworth Women's Health Center  
Maine Women's Lobby  
MANA, A National Latina Organization  
Medical Students for Choice  
Ms. Foundation for Women  
NARAL Pro-Choice America  
National Abortion Federation  
National Black Justice Coalition (NBJC)  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Congress of Black Women, Inc.  
National Council of Jewish Women  
National Institute for Reproductive Health  
National Latina Institute for Reproductive Health  
National LGBTQ Task Force Action Fund  
National Partnership for Women & Families  
National Women's Health Network  
National Women's Law Center  
North Dakota Women's Network  
OWL - The Voice of Women 40+  
PathWays PA  
Planned Parenthood Federation of America  
Population Connection Action Fund  
Reproductive Health Technologies Project  
Sargent Shriver National Center on Poverty Law  
SEIU  
Southwest Women's Law Center  
Ultraviolet  
URGE: Unite for Reproductive & Gender Equity  
USAction  
Women Employed  
Women's Bar Association of the District of Columbia  
Women's Law Project  
Women's Media Center  
YWCA USA

April 25, 2016

The Honorable Mitch McConnell  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510-1702

The Honorable Harry Reid  
United States Senate  
522 Hart Senate Office Building  
Washington, DC 20510-2803

Dear Senators McConnell and Reid:

As history, civics, and social studies educators, we urge the United States Senate to do its job and hold a hearing and an up-or-down vote on the President's nominee for the United States Supreme Court: Merrick Garland, chief judge of the U.S. Court of Appeals for the D.C. Circuit.

As we teach our students, Article 2, Section 2 of the Constitution stipulates that it is the President's duty to nominate Supreme Court justices and the Senate's duty to provide "advice and consent"—take action on such nominations. Moreover, as Alexander Hamilton wrote in the Federalist Papers, the Senate should not reject a nominee unless there are "special and strong reasons for the refusal." Judge Garland is clearly qualified and holds the high ethical standards expected of a Supreme Court justice.

If a student answered on an exam that our Presidents lose the power to appoint Supreme Court justices in the fourth year of their term, that answer would be marked "incorrect"—neither the text of the Constitution nor tradition justify it. In fact, since 1875, every Supreme Court nominee has received either a hearing or a vote. Those nominated or confirmed in the final year of a President's term include John Marshall, one of the earliest chief justices, and Anthony Kennedy, who was nominated by President Ronald Reagan and still serves.

As educators in the classroom, we believe it is our responsibility to help students learn about—and appreciate—the role citizens play in our democracy. We teach that being a good citizen requires cooperation, mutual respect, and the ability to compromise. When our students work in groups, they work together and do their jobs, even when they are not friends or have disagreements.

Please help us teach our students the true meaning of democracy. Demonstrate that America's leaders can put aside their differences to do their jobs. For the sake of the students who are the future of America, we urge you to hold a hearing and up-or-down vote on Judge Garland, the President's nominee for the Supreme Court.

Sincerely,

Joanne Beaver  
High School AP Government  
Mechanicsburg, PA

Patrick Chambers  
High School AP Government  
Indianapolis, IN

Pete Clancy  
High School Social Studies  
Cedar Rapids, IA

Gina Daniels  
High School History  
Blacklick, OH

John deVille  
High School AP U.S. History & U.S. History  
Franklin, NC

Marisol Garcia  
8<sup>th</sup> Grade Social Studies  
Phoenix, AZ

Jim Griffin  
11-12<sup>th</sup> Grade Government  
Salem Hills, UT

Valarie Jackson  
High School World History  
Beaufort, SC

Kerry Konda  
9<sup>th</sup> Grade Government  
Aberdeen, SD

Lisa Petrey-Kirk  
Middle School Social Studies  
Lawrenceburg, KY

Megan Tuttle  
8<sup>th</sup> Grade Social Studies  
Pembroke, NH

Nathan Ugoretz  
10<sup>th</sup> Grade AP U.S. History  
Port Washington, WI



The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

May 5, 2016

The Honorable Harry Reid  
Minority Leader  
United States Senate  
522 Hart Senate Office Building  
Washington, DC 20510

The Honorable Chuck Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
437 Hart Senate Office Building  
Washington, DC 20510

The Honorable Patrick Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
437 Russell Senate Office Building  
Washington, DC 20510

Dear Majority Leader McConnell, Minority Leader Reid, Chairman Grassley, and Ranking Member Leahy:

Each of us headed the Office of the Solicitor General. Our service took place under both Republican and Democratic Presidents. We write collectively in support of Judge Merrick Garland's qualifications to serve as an Associate Justice of the United States Supreme Court. We believe that Judge Garland has demonstrated the temperament, intellect, and experience to serve in this capacity.

Merrick Garland has a history of excellence in the Law. He served in high ranking Justice Department posts, as a partner at a major law firm, an Assistant United States Attorney, a law clerk on the United States Supreme Court, a law clerk on the Second Circuit for the legendary Judge Henry Friendly, and, of course, for nearly the last two decades, as a Judge on the United States Court of Appeals for the D.C. Circuit. He presently serves as the Chief Judge of that Circuit, where he is known for his collegiality and is widely respected by his colleagues and litigants who have come before him.

As a group, we have argued hundreds of cases before the United States Supreme Court and the federal Courts of Appeals. Each of us has served as the United States Government's top representative before the Supreme Court. And while we have served in different Administrations, we are unified in our belief that Judge Garland is superbly qualified to serve on the Supreme Court if he were confirmed.

We are confident that Judge Garland would bring his brilliance, work ethic, and broad experience to the cases that come before him. Please do not hesitate to contact us if you have questions.

Respectfully submitted,

Neal K. Katyal (Acting Solicitor General, 2010-2011)

Gregory G. Garre (Solicitor General, 2008-2009)

Paul D. Clement (Solicitor General, 2005-2008)

Theodore B. Olson (Solicitor General, 2001-2004)

Barbara D. Underwood (Acting Solicitor General, 2001)

Seth P. Waxman (Solicitor General, 1997-2001)

Walter E. Dellinger III (Acting Solicitor General, 1996-1997)

Drew S. Days III (Solicitor General, 1993-1996)

Kenneth W. Starr (Solicitor General, 1989-1993)